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इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके।
Separate paging is given to this Part in order that it may be filed as a separate compilation.

LOK SABHA

The following Bill was introduced in the Lok Sabha on 13th August, 2003:—

BILL NO. 59 OF 2003

A Bill further to amend the Banking Regulation Act, 1949, the State Financial Corporations Act, 1951, the State Bank of India Act, 1955, the Companies Act, 1956, the State Bank of India (Subsidiary Banks) Act, 1959, the Warehousing Corporations Act, 1962, the Regional Rural Banks Act, 1976, the Industrial Finance Corporation (Transfer of Undertaking and Repeal) Act, 1993, the Industrial Reconstruction Bank (Transfer of Undertakings and Repeal) Act, 1997 and the Unit Trust of India (Transfer of Undertaking and Repeal) Act, 2002.

BE it enacted by Parliament in the Fifty-fourth Year of the Republic of India as follows:—

1. (1) This Act may be called the Banking Regulation (Amendment) and Miscellaneous Provisions Act, 2003.

Short title and
commencement.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint:

Provided that different dates may be appointed for different provisions of this Act and any reference in any such provision to the commencement of this Act shall be construed as a reference to the coming into force of that provision.

Amendment
of section 3.

2. In section 3 of the Banking Regulation Act, 1949 (hereinafter referred to as the principal Act), in the opening portion, for the words “this Act shall apply”, the words, brackets and figures “this Act shall apply before the commencement of the Banking Regulation (Amendment) and Miscellaneous Provisions Act, 2003” shall be substituted. 10 of 1949.

Amendment
of section 4.

3. In section 4 of the principal Act, in sub-section (1), for the words “banking company”, the words “banking company or banking co-operative society” shall be substituted.

Amendment
of section 5.

4. In section 5 of the principal Act,—

(a) for clause (a), the following clause shall be substituted, namely:—

“(a) “approved securities” means the securities issued by the Central Government or any State Government or such other securities as may be specified by the Reserve Bank from time to time;”;

(b) in clause (ca), after the words “the efficient use of these deposits and resources” occurring at the end, the words “and prudential norms for asset classification, income recognition, accounting standards, provision for loans and advances and capital adequacy and any other related matter” shall be inserted;

(c) after clause (ca), the following clause shall be inserted, namely:—

“(cb) “banking co-operative society” means a State co-operative bank, a central co-operative bank and a primary co-operative bank which transacts the business of banking in India;”;

(d) in clause (cc), for the words “in relation to a banking company”, the words “in relation to a banking company or banking co-operative society” shall be substituted;

(e) after clause (cc), the following clause shall be inserted, namely:—

“(cd) “central co-operative bank” shall have the meaning assigned to it in clause (d) of section 2 of the National Bank for Agriculture and Rural Development Act, 1981;”;

61 of 1981.

(f) after clause (da), the following clauses shall be inserted, namely:—

“(db) “co-operative society” means a society registered or deemed to be registered under the Multi-State Co-operative Societies Act, 2002 or any other law relating to the registration of co-operative societies for the time being in force in any State;

39 of 2002.

(dc) “primary co-operative bank” means a co-operative society,—

(i) the primary object or principal business of which is the transaction of banking business, and

(ii) the bye-laws of which do not permit admission of any other co-operative society as a member:

Provided that this sub-clause shall not apply to the admission of a banking co-operative society as a member by reason of such banking co-operative society subscribing to the share capital of such co-operative society out of funds provided by the State Government for the purpose”;

(g) after clause (g), the following clause shall be inserted, namely:—

“(ga) “local area bank” means a banking company having its area of operation confined to three or less than three geographically contiguous districts in a State or adjoining States;”;

(h) clause (gg) shall be omitted;

(i) for clause (h), the following clause shall be substituted, namely:—

‘(h) “managing director”,—

(A) in relation to a banking company, means a director who, by virtue of an agreement with the banking company or of a resolution passed by the banking company in general meeting or by its Board of directors or, by virtue of its memorandum or articles of association, is entrusted with the management of the whole, or substantially the whole of the affairs of the company, and includes a director occupying the position of a managing director, by whatever name called;

(B) in relation to a banking co-operative society, means a president or vice-president or chairperson or vice-chairperson or managing director or secretary or manager or member of a board or treasurer or any other person empowered to give directions in regard to the whole of the affairs, or business, of banking co-operative society:

Provided that the managing director shall exercise his powers subject to the superintendence, control and direction of the Board of directors;’;

(j) for clause (na), the following clause shall be substituted, namely:—

‘(na) “small-scale industrial concern” means an industrial undertaking as defined in clause (j) of section 3 of the Industries (Development and Regulation) Act, 1951 and includes an industrial concern engaged in services sector the investment in which does not exceed such amount as may be specified, by notification, by the Central Government;’;

65 of 1951.

(k) in clause (ne), for sub-clause (i), the following sub-clause shall be substituted, namely:—

‘(i) in relation to a company or co-operative society, means the holding of a beneficial interest by an individual or his spouse or minor child, whether singly or taken together, in the shares thereof, the amount paid-up on which exceeds one crore rupees or ten per cent. of the paid-up capital of the company or co-operative society, whichever is less;’;

(l) after clause (ne), the following clause shall be inserted, namely:—

‘(nf) “State co-operative bank” shall have the meaning assigned to it in clause (u) of section 2 of the National Bank for Agriculture and Rural Development Act, 1981;’.

61 of 1981.

5. In section 5A of the principal Act,—

Amendment
of section 5A.

(i) for clause (a), the following clause shall be substituted, namely:—

“(a) the provisions of this Act shall have effect notwithstanding anything to the contrary contained in the memorandum or articles of a banking company or in bye-laws of a banking co-operative society or in any agreement executed by the company or co-operative society, or in any resolution passed by the banking company or banking co-operative society in general meeting or by its Board of directors, whether the same be registered, executed or passed, as the case may be; and”;

(ii) in clause (b), for the words “memorandum, articles”, the words “memorandum, bye-laws, articles” shall be substituted.

Substitution of
new section
for section 6.

Form of
business in
which banking
companies or
banking co-
operative
societies may
engage.

6. For section 6 of the principal Act, the following section shall be substituted, namely:—

“6. (1) In addition to the business of banking, a banking company or banking co-operative society may engage in any one or more of the following forms of business, namely:—

(a) the borrowing, raising or taking up of money; the lending or advancing of money either upon or without security; the drawing, making, accepting, discounting, buying, selling, collecting and dealing in bills of exchange, hundies, promissory notes, coupons, drafts, bills of lading, railway receipts, warrants, debentures, certificates, scrips and other instruments and securities whether transferable or negotiable or not; the granting and issuing of letters of credit, traveller's cheques and circular notes; the buying, selling and dealing in bullion and specie; the buying and selling of foreign exchange including foreign bank notes; the acquiring, holding, issuing on commission, underwriting and dealing in stock, funds, shares, debentures, debenture stock, bonds, obligations, securities and investments of all kinds; the purchasing and selling of bonds, scrips or other forms of securities on behalf of constituents or others; the negotiating of loans and advances; the receiving of all kinds of bonds, scrips or valuables on deposit or for safe custody or otherwise; the providing of safe deposit vaults; the collecting and transmitting of money and securities; leasing equipment, hire purchase, factoring, insurance, sponsoring a mutual fund, acting as a trustee in a mutual fund, dealing in credit cards, debit cards, smart cards, derivatives and securitisation;

(b) acting as agents for any Government or local authority or any other person or persons; the carrying on of agency business of any description including the clearing and forwarding of goods, giving of receipts and discharges and otherwise acting as an attorney on behalf of customers, but excluding the business of secretary or treasurer of a company;

(c) contracting for public or private loans and negotiating and issuing the same;

(d) the effecting, insuring, guaranteeing, underwriting, participating in managing and carrying out of any issue, public or private, of State, municipal or other loans or of shares, stock, debentures or debenture stock of any company, corporation or association and the lending of money for the purpose of any such issue;

(e) carrying on and transacting any kind of guarantee and indemnity business;

(f) managing, selling and realising any property which may come into the possession of the company or co-operative society in satisfaction or part satisfaction of any of its claims;

(g) acquiring and holding and generally dealing with any property or any right, title or interest in any such property which may form the security or part of the security for any loans or advances or which may be connected with any such security;

(h) undertaking and executing trusts;

(i) undertaking the administration of estates as executor, trustee or otherwise;

(j) establishing and supporting or aiding in the establishment and support of associations, institutions, funds, trusts and conveniences calculated to benefit employees or ex-employees of the company or the co-operative society or the

dependents or connections of such persons; granting pensions and allowances and making payments towards insurance; subscribing to or guaranteeing moneys for charitable or benevolent objects or for any exhibition or for any public, general or useful object;

(k) the acquisition, construction, maintenance and alteration of any building or works necessary or convenient for the purposes of the company or co-operative society;

(l) selling, improving, managing, developing, exchanging, leasing, mortgaging, disposing of or turning into account or otherwise dealing with all or any part of the property and rights of the company or co-operative society;

(m) acquiring and undertaking the whole or any part of the business, of any person or company or co-operative society when such business is of a nature enumerated or described in this sub-section;

(n) formation of a company, whose object is to engage in any one or more forms of business specified in this sub-section;

(o) doing all such other things as are incidental or conducive to the promotion or advancement of the business of the company or co-operative society;

(p) any other form of business which the Central Government, in consultation with the Reserve Bank may, by notification in the Official Gazette, specify as a form of business in which it is lawful for a banking company or banking co-operative society to engage.

(2) No banking company or banking co-operative society shall engage in any form of business other than those referred to in sub-section (1)."

7. In section 7 of the principal Act,—

Amendment
of section 7.

(a) after sub-section (1), the following sub-section shall be inserted, namely:—

'(1A) No co-operative society other than a banking co-operative society shall use as part of its name or in connection with its business any of the words "bank", "banker" or "banking" and no co-operative society shall carry on the business of banking in India unless it uses as part of its name at least one of such words:

Provided that any co-operative society other than a banking co-operative society, which uses on the date of commencement of the Banking Regulation (Amendment) and Miscellaneous Provisions Act, 2003, as part of its name or in connection with its business any of the words "bank", "banker" or "banking" shall, within a period of six months from the date of such commencement, omit such words in its name and cease to use such words in connection with its business.'

(b) in sub-section (2),—

(i) for the word ' "bank" ', the words ' "bank", "banker" ' shall be substituted;

(ii) for the words "banking company", the words "banking company or banking co-operative society" shall be substituted;

(iii) the following *Explanation* shall be inserted, namely:—

'*Explanation*.—For the removal of doubts, it is hereby declared that for the purposes of sub-section (2), the expression "group of individuals" includes the trustees of a trust or other persons managing the trust.';

(c) in sub-section (3),—

(i) in clause (a), for the words “banking company” at both the places where they occur, the words “banking company or banking co-operative society” shall be substituted;

(ii) after clause (b), the following clauses shall be inserted, namely:—

‘(c) a co-operative society formed for the protection of the mutual interest of banking co-operative societies or co-operative land mortgage banks;

(d) any co-operative society, formed by the employees of a banking company or banking co-operative society or the State Bank of India or a subsidiary bank or a corresponding new bank or the co-operative land mortgage bank, or a subsidiary of such banking company, or banking co-operative society or the State Bank of India or the subsidiary bank or the corresponding new bank, in so far as the words “bank”, “banker” or “banking” appears as part of the name of the employer bank, or as the case may be, of the bank, whose subsidiary the employer bank is; or

(e) a co-operative land mortgage bank.”;

(d) after sub-section (3), the following sub-section shall be inserted, namely:—

“(4) If a default is made in complying with the provisions of sub-section (1) or sub-section (1A) or sub-section (2), any person who is in default shall be punishable with imprisonment for a term which may extend to five years or with fine or with both.”.

Amendment
of section 8.

8. In section 8 of the principal Act,—

(i) for the words “no banking company”, the words “no banking company or banking co-operative society” shall be substituted;

(ii) in the proviso, for the brackets and letter “(o)”, the brackets and letter “(p)” shall be substituted.

Omission of
section 9.

9. Section 9 of the principal Act shall be omitted.

Substitution of
new section
for section 10.

10. For section 10 of the principal Act, the following section shall be substituted, namely:—

Prohibition of
employment
and restric-
tion on certain
forms of
employment.

“10. (1) No banking company or banking co-operative society—

(a) shall employ or continue the employment of any person—

(i) who is, or at any time, has been adjudicated insolvent, or has suspended payment or has compounded with his creditors, or who is, or has been, convicted by a criminal court of an offence involving moral turpitude; or

(ii) whose remuneration or part of whose remuneration takes the form of commission or of a share in the profits of the company or co-operative society:

Provided that nothing contained in this sub-clause shall apply to the payment by a banking company or banking co-operative society of—

(A) any bonus in pursuance of a settlement or award arrived at or made under any law relating to industrial disputes or in accordance with any scheme framed by such banking company or banking co-operative society or in accordance with the usual practice prevailing in banking business;

(B) any commission to any broker (including guarantee broker), cashier-contractor, clearing and forwarding agent, auctioneer or any

other person, employed by the banking company or banking co-operative society under a contract otherwise than as a regular member of the staff of the company or co-operative society; or

(iii) whose remuneration is, in the opinion of the Reserve Bank, excessive; or

(b) shall be managed by any person—

(i) who is a director of any other company or co-operative society not being—

(A) a subsidiary of the banking company or banking co-operative society; or

(B) a company registered under section 25 of the Companies Act, 1956:

1 of 1956.

Provided that the prohibition in this sub-clause shall not apply in respect of any such director for a temporary period not exceeding three months or such further period not exceeding nine months as the Reserve Bank may allow; or

(ii) who is engaged in any other business or vocation; or

(iii) whose term of office as a person managing the banking company or banking co-operative society is for a period exceeding five years at any one time:

Provided that the term of office of any such person may be renewed or extended by further periods not exceeding five years on each occasion subject to the condition that such renewal or extension shall not be sanctioned earlier than two years from the date on which it is to come into force:

Provided further that nothing in this clause shall apply to a director, other than the managing director, of a banking company or banking co-operative society by reason only of his being such director.

Explanation.—For the purposes of sub-clause (iii) of clause (a), the expression “remuneration”, in relation to a person employed or continued in employment, shall include salary, fees and perquisites but shall not include any allowances or other amounts paid to him for the purpose of reimbursing him in respect of the expenses actually incurred by him in the performance of his duties.

(2) In forming its opinion under sub-clause (iii) of clause (a) of sub-section (1), the Reserve Bank may have regard among other matters to the following, namely:—

(i) the financial condition and history of the banking company or banking co-operative society, its size and area of operation, its resources, the volume of its business, and the trend of its earning capacity;

(ii) the number of its branches or offices;

(iii) the qualifications, age and experience of the person concerned;

(iv) the remuneration paid to other persons employed by the banking company or banking co-operative society or to any person occupying a similar position in any other banking company or banking co-operative society similarly situated; and

(v) the interest of its depositors.

(3) Any decision or order of the Reserve Bank made under this section shall be final for all purposes.”.

Amendment of
section 10A.

11. In section 10A of the principal Act,—

(a) for sub-section (1), the following sub-section shall be substituted, namely:—

“(1) Notwithstanding anything contained in any other law for the time being in force, every banking company or banking co-operative society shall comply with the requirements of this section.”;

(b) in sub-section (2),—

(i) in the opening portion, for the words “banking company”, the words “banking company or banking co-operative society” shall be substituted;

(ii) in clause (a),—

(A) after item (vii), the following item shall be inserted, namely:—

“(viii) science and technology,”;

(B) in item (ix), for the words “the banking company”, “the words the banking company or banking co-operative society” shall be substituted.

(C) for the proviso, the following proviso shall be substituted, namely:—

“Provided that out of the aforesaid number of directors,—

(a) not less than two shall be the persons having special knowledge or practical experience in respect of agriculture and rural economy, co-operation or small-scale industry; and

(b) not less than two shall be the persons having special knowledge or practical experience in respect of accountancy or banking or finance or science and technology; and”;

(iii) in clause (b), in sub-clause (1), for the words “manager or managing agent”, the words “or manager” shall be substituted;

(c) in sub-section (2A),—

(i) for the words “banking company” wherever they occur, the words “banking company or banking co-operative society” shall be substituted;

(ii) for the words “eight years”, the words “six years” shall be substituted;

(d) after sub-section (2A), the following sub-section shall be inserted, namely:—

“(2B) No banking company or banking co-operative society shall have as a director on its Board of directors any person who is a stock-broker or sub-broker registered as such under section 12 of the Securities and Exchange Board of India Act, 1992.”;

(e) in sub-sections (3), (5) and (8), for the words “banking company” wherever they occur, the words “banking company or co-operative society” shall be substituted.

12. For section 10B of the principal Act, the following section shall be substituted, namely:—

Substitution of new section for section 10B.

20 of 1994.

'10B. (1) Notwithstanding anything contained in any law for the time being in force or in any contract to the contrary, every banking company in existence on the commencement of the Banking Regulation (Amendment) Act, 1994, or which comes into existence thereafter and every banking co-operative society shall have one of its directors, who may be appointed on a whole-time or a part-time basis as chairman of its Board of directors, and where he is appointed on a whole-time basis as chairman of its Board of directors, he shall be entrusted with the management of the whole of the affairs of the banking company or banking co-operative society:

Banking company or banking co-operative society to be managed by whole-time chairman.

Provided that the chairman shall exercise his powers subject to the superintendence, control and direction of the Board of directors.

(2) Where a chairman is appointed on a part-time basis,—

(i) such appointment shall be with the previous approval of the Reserve Bank and be subject to such conditions as the Reserve Bank may specify while giving such approval;

(ii) the management of the whole of the affairs of such banking company or banking co-operative society shall be entrusted to a managing director who shall exercise his powers subject to the superintendence, control and direction of the Board of directors;

(3) Every chairman of the Board of directors who is appointed on a whole-time basis and every managing director of a banking company or banking co-operative society shall be in the whole-time employment of such company or co-operative society and shall hold office for such period, not exceeding five years, as the Board of directors may fix, but shall, subject to the provision of this section, be eligible for re-election or re-appointment:

Provided that nothing in this sub-section shall be construed as prohibiting a chairman from being a director of a subsidiary of the banking company or banking co-operative society or a director of a company registered under section 25 of the Companies Act, 1956;

1 of 1956.

(4) Every chairman of the Board of directors who is appointed on a whole-time basis and every managing director of a banking company or banking co-operative society appointed under sub-section (2) shall be a person who has special knowledge and practical experience of—

(a) in the case of the banking company,—

(i) the working of a banking company or the State Bank of India or any subsidiary bank or a financial institution, or

(ii) financial, economic or business administration;

(b) in the case of a banking co-operative society,—

(i) the working of a banking co-operative society, or

(ii) financial, economic, business administration; or co-operation:

Provided that a person shall be disqualified for being a chairman who is appointed on a whole-time basis or a managing director, if he—

(a) is a director of any company or co-operative society other than a company or co-operative society referred to in the proviso in sub-section (3), or

(b) is a partner of any firm which carries on any trade, business or industry,
or

(c) has substantial interest in any other company or co-operative society
or firm, or

(d) is a director, or manager, or partner, or proprietor, of any trading,
commercial or industrial concern, or

(e) is engaged in any other business or vocation.

(5) A chairman of the Board of directors appointed on a whole-time basis or a managing director of a banking company or banking co-operative society may, by writing, under his hand addressed to the company or co-operative society, resign his office.

(6) A chairman of the Board of directors appointed on a whole-time basis or a managing director whose term of office has come to an end, either by reason of his resignation or by reason of the expiry of the period of his office, shall, subject to the approval of the Reserve Bank, continue in office until his successor assumes office.

(7) Without prejudice to the provisions of section 36AA, where the Reserve Bank is of opinion that any person who is, or has been elected to be, the chairman of the Board of directors who is appointed on a whole-time basis or the managing director of a banking company or banking co-operative society is not a fit and proper person to hold such office, it may, after giving to such person and to the banking company or banking co-operative society a reasonable opportunity of being heard, by order in writing, require the banking company or banking co-operative society to elect or appoint any other person as the chairman of the Board of directors to be appointed on a whole-time basis or the managing director and if, within a period of two months from the date of receipt of such order, the banking company or banking co-operative society fails to elect or appoint a suitable person as the chairman of the Board of directors to be appointed on a whole-time basis or the managing director, the Reserve Bank may, by order, remove the first-mentioned person from the office of the chairman of the Board of directors who is appointed on a whole-time basis or the managing director of the banking company or banking co-operative society and appoint a suitable person in his place whereupon the person so appointed shall be deemed to have been duly elected or appointed, as the case may be, as the chairman of the Board of directors who is appointed on a whole-time basis or the managing director of such banking company or banking co-operative society and any person elected or appointed as chairman on a whole-time basis or managing director under this sub-section shall hold office for the residue of the period of office of the person in whose place he has been so elected or appointed.

(8) The banking company or banking co-operative society and any person against whom an order of removal is made under sub-section (7) may, within thirty days from the date of communication to it or to him of the order, prefer an appeal to the Central Government and the decision of the Central Government thereon, and subject thereto, the order made by the Reserve Bank under sub-section (7), shall be final and shall not be called into question in any court.

(9) Notwithstanding anything contained in this section, the Reserve Bank may, if in its opinion it is necessary in the public interest so to do, permit the chairman of the Board of directors who is appointed on a whole-time basis or the managing director to undertake such part-time honorary work as is not likely to interfere with his duties as such chairman or managing director.

(10) Notwithstanding anything contained in this section, where a person appointed on a whole-time basis as chairman of the Board of directors or managing

director dies or resigns or is by infirmity or otherwise rendered incapable of carrying out his duties or is absent on leave or otherwise in circumstances not involving the vacation of his office, the banking company or the banking co-operative society may, with the approval of the Reserve Bank, make suitable arrangements for carrying out the duties of chairman or managing director for a period not exceeding four months on any one occasion but which shall not exceed total period of one year.'

13. For section 10BB of the principal Act, the following section shall be substituted, namely:—

Substitution of new section for section 10BB.

"10BB. (1) Where the office of the chairman of the Board of directors appointed on a whole-time basis or a managing director of a banking company or banking co-operative society is vacant, the Reserve Bank may, if it is of opinion that the continuation of such vacancy is likely to adversely affect the interests of the banking company or banking co-operative society, appoint a person, eligible under sub-section (4) of section 10B to be so appointed, to be the chairman of the Board of directors appointed on a whole-time basis or a managing director of the banking company or banking co-operative society and where the person so appointed is not a director of such banking company or banking co-operative society, he shall, so long as he holds the office of the chairman of the Board of directors appointed on a whole-time basis or a managing director be deemed to be the director of the banking company or banking co-operative society.

Power of Reserve Bank to appoint chairman of the Board of directors on a whole-time basis or managing director of a banking company or a banking co-operative society.

(2) The chairman of the Board of directors appointed on a whole-time basis or a managing director so appointed by the Reserve Bank shall be in whole-time employment of the banking company or banking co-operative society and shall hold office for such period not exceeding three years, as the Reserve Bank may specify, but shall, subject to other provisions of this Act, be eligible for re-appointment.

(3) The chairman of the Board of directors appointed on a whole-time basis or a managing director so appointed by the Reserve Bank shall draw from the banking company or banking co-operative society such pay and allowances as the Reserve Bank may determine and may be removed from the office only by the Reserve Bank.

(4) Save as otherwise provided in this section, the provisions of section 10B shall, as far as may be, apply to the chairman of the Board of directors appointed on a whole-time basis or a managing director appointed by the Reserve Bank under sub-section (1) as they apply to a chairman of the Board of directors appointed on a whole-time basis or a managing director appointed by the banking company or banking co-operative society."

14. In section 10C of the principal Act,—

Amendment of section 10C.

(a) for the words "banking company" wherever they occur, the words "banking company or banking co-operative society" shall be substituted;

(b) the following proviso shall be inserted, namely:—

"Provided that a chairman of the Board of directors appointed on a whole-time basis or the managing director appointed by the Reserve Bank in a banking co-operative society may not be a member in that banking co-operative society."

15. In section 10D of the principal Act, after the words "articles of association" occurring at the end, the words "or bye-laws" shall be inserted.

Amendment of section 10D.

16. For section 11 of the principal Act, the following section shall be substituted, namely:—

Substitution of new section for section 11.

"11. (1) Notwithstanding anything contained in section 149 of the Companies Act, 1956, or any other law for the time being in force, no banking company or banking co-operative society shall, after the commencement of the Banking Regulation (Amendment) and Miscellaneous Provisions Act, 2003, commence or carry on business in India, unless it complies with such of the requirements of this section as are applicable to it.

Requirement as to minimum paid-up capital and reserves.

(2) In the case of a banking company, not being a local area bank, incorporated in India, the aggregate value of its paid-up capital and reserves shall not be less than one hundred crore rupees.

(3) In the case of a banking company being a local area bank, the aggregate value of its paid-up capital and reserves shall not be less than five crore rupees.

(4) In the case of a banking co-operative society, the aggregate value of its paid-up capital and reserves shall not be less than twenty-five lakh rupees.

(5) In the case of a banking company incorporated outside India—

(i) the aggregate value of its paid-up capital and reserves shall not be less than one hundred crore rupees; and

(ii) the banking company shall deposit and keep deposited with the Reserve Bank either in cash or in the form of unencumbered approved securities, or partly in cash and partly in the form of such securities—

(a) an amount which shall not be less than the minimum required by clause (i) above, and

(b) as soon as may be after the expiration of each year, an amount calculated at twenty per cent. or such higher percentage as may be specified by the Reserve Bank, of its profit for that year in respect of all business transacted through its branches in India, as disclosed in the profit and loss account prepared with reference to that year under section 29:

Provided that any such banking company may at any time replace —

(i) any securities so deposited by cash or by any other unencumbered approved securities or partly by cash and partly by other such securities, so, however, that the total amount deposited is not affected;

(ii) any cash so deposited by unencumbered approved securities of an equal value:

Provided further that the Reserve Bank may, by notification, increase the amount of aggregate value of minimum capital and reserves specified in sub-sections (2) to (5) to such higher amount, as it may, in the interest of the banking policy, consider necessary.

(6) Notwithstanding anything contained in sub-sections (2) to (5), a banking company or banking co-operative society in existence on commencement of the Banking Regulation (Amendment) and Miscellaneous Provisions Act, 2003 and having a paid-up capital and reserves of less than the amount specified in sub-sections (2) to (5) may, for the purpose of enabling such company or co-operative society to fulfil the requirements of paid-up capital and reserves, continue to carry on the business of banking for a period of three years from such commencement, or for such further period as the Reserve Bank may, after recording the reasons for so doing in writing, extend:

Provided that the period allowed to continue business under this section shall in no case exceed six years in the aggregate.

(7) Notwithstanding anything contained in sub-section (5), the Central Government may, on the recommendation of the Reserve Bank, and having regard to the adequacy of the amounts already deposited and kept deposited by a banking company incorporated outside India, in relation to its deposit liabilities in India, declare by an order in writing that the provisions of sub-clause (b) of clause (ii) of sub-section (5) shall not apply to such banking company for such period as may be specified in the order.

(8) Any amount deposited and kept deposited with the Reserve Bank under sub-section (5) by any banking company incorporated outside India shall, in the event of the banking company ceasing for any reason to carry on banking business in India, be an asset of the company on which the claims of all the creditors of the company in India shall be a first charge.

(9) If any dispute arises in computing the aggregate value of the paid-up capital and reserves of any banking company or banking co-operative society, a determination thereof by the Reserve Bank shall be final for the purposes of this section.

(10) For the purposes of this section, "value" means the real or exchangeable value, and not the nominal value which may be shown in the books of the banking company or banking co-operative society concerned."

17. In section 12 of the principal Act, in sub-section (1),—

Amendment
of section 12.

(a) for sub-clause (ii), the following sub-clause shall be substituted, namely:—

"(ii) that the capital of such banking company shall consist of ordinary or equity shares, and irredeemable preference shares or preference shares redeemable after such period as the banking company may decide:

Provided that the Reserve Bank may specify the extent to which a banking company may issue preference shares of either description:

Provided further that the holders of the preference shares issued by any banking company shall not be entitled to exercise voting rights as specified in the proviso to clause (b) of sub-section (2) of section 87 of the Companies Act, 1956.";

(b) the proviso shall be omitted.

18. In section 12A of the principal Act, in sub-section (1),—

Amendment
of section
12A.

(a) for the words "banking company" at both the places where they occur, the words "banking company or banking co-operative society" shall be substituted;

(b) for the words "shareholders of the company", the words "shareholders of the company or co-operative society" shall be substituted;

(c) for the words "permissible under this Act", the words "permissible under this Act or any other law relating to the co-operative societies, for the time being in force, as the case may be" shall be substituted.

19. After section 12A of the principal Act, the following sections shall be inserted, namely:—

Insertion of
new sections
12B, 12C and
12D.

"12B. (1) Except with the previous approval of the Reserve Bank, no individual, firm, group, constituent of a group, body corporate or bodies corporate, shall jointly or severally acquire or agree to acquire, whether in his or its own name or in the name of any other person, any shares in a banking company, if the total nominal value of the shares intended to be so acquired exceeds, or would, together with the total nominal value of any shares already held in the banking company, exceed five per cent. of the paid-up share capital of such company.

Restrictions
on acquisition
of certain
shares.

(2) Where any individual, firm, group, constituent of a group, body corporate or bodies corporate (hereafter in this section referred to as the acquirer), is prohibited, by sub-section (1), from acquiring or agreeing to acquire except with the previous approval of the Reserve Bank, any shares of a banking company, no such banking company shall transfer any share to such acquirer unless such acquirer has obtained the previous approval of the Reserve Bank for the acquisition or agreement for the acquisition of such shares.

Restriction on
transfer of
shares.

12C. (1) Every individual, firm, group, constituent of a group, body corporate, bodies corporate, holding, whether singly or in the aggregate five per cent. or more of the nominal value of the paid-up share capital of banking company shall, before transferring one or more such shares, give to the Reserve Bank an intimation of its or their proposal to transfer such shares and every such intimation shall include a statement as to the particulars of the shares proposed to be transferred, the name and address of the person to whom the shares are proposed to be transferred, and share holding, if any, of the proposed transferee, in the banking company and such other particulars as may be prescribed.

(2) Where, on receipt of an intimation given under sub-section (1) or otherwise, the Reserve Bank is satisfied that as a result of such transfer, a change in the composition of the Board of directors of the banking company is likely to take place and that such change would be prejudicial to the interests of the banking company or to the public interest, it may, by order, direct that no such shares shall be transferred to the proposed transferee and the Reserve Bank may direct the banking company not to give effect to the transfer of such shares and where the transfer of such shares has already been registered, the Reserve Bank may direct the banking company not to permit the transferee or any nominee or proxy of the transferee to exercise any voting or other rights attaching to such shares.

(3) Where any direction is given by the Reserve Bank under sub-section (2), the shares referred to therein shall stand re-transferred to the person from whom such shares were acquired.

(4) The person to whom any shares stand re-transferred under sub-section (3) shall be eligible to exercise voting or other rights attaching to such shares.

Time within
which refusal
to be
communicated.

12D. Every request made to the Reserve Bank for according its approval to the proposal for the acquisition of any shares referred to in section 12B or the transfer of any shares referred to in section 12C shall be presumed to have been granted unless, within a period of sixty days from the date of receipt of such request, the Reserve Bank communicates to the person by whom the request was made, that the approval prayed for cannot be granted."

Omission of
section 13.

20. Section 13 of the principal Act shall be omitted.

Substitution of
new section
for section 14.

21. For section 14 of the principal Act, the following section shall be substituted, namely:—

Prohibition of
charge on
unpaid
capital.

"14. No banking company or banking co-operative society shall create any charge upon any unpaid capital, if any, of such company or co-operative society and any such charge shall be invalid."

Amendment
of section 14A.

22. In section 14A of the principal Act,—

(a) in sub-section (1),—

(i) for the words "no banking company", the words "no banking company or banking co-operative society" shall be substituted;

(ii) for the words "the company", the words "the company or co-operative society" shall be substituted;

(iii) for the words "such company", the words "such company or co-operative society" shall be substituted;

(b) in sub-section (3), for the words "banking company", the words "banking company or banking co-operative society" shall be substituted.

Amendment
of section 15.

23. In section 15 of the principal Act,—

(a) for the words "banking company" wherever they occur, the words "banking company or banking co-operative society" shall be substituted;

1 of 1956.

(b) in sub-section (2), for the words and figures "the Companies Act, 1956", the words and figures "the Companies Act, 1956 or any other law for the time being in force" shall be substituted.

24. For section 16 of the principal Act, the following section shall be substituted namely:—

Substitution of new section for section 16.

"16. (1) No banking company incorporated in India or banking co-operative society registered in India under any law relating to co-operative societies for the time being in force shall have on or after the commencement of the Banking Regulation (Amendment) and Miscellaneous Provisions Act, 2003, as director in its Board of directors any person who is a director of any other banking company or a corresponding new bank or the State Bank of India or subsidiary bank or a banking co-operative society except with the previous permission in writing of the Reserve Bank.

Prohibition of common directors.

(2) No banking company referred to in sub-section (1) shall have in its Board of directors more than three directors who are directors of companies or co-operative societies, which among themselves are entitled to exercise voting rights in excess of twenty per cent. of the total voting rights of all the shareholders of that banking company.

(3) Nothing in sub-section (1) shall apply to, or in relation to, any—

- (a) director appointed by the Reserve Bank;
- (b) director of a primary co-operative bank who is also a director on the Board of a central co-operative bank or State co-operative bank to which the primary co-operative bank is affiliated;
- (c) director of a central co-operative bank who is also on the Board of a State co-operative bank to which such central co-operative bank is affiliated."

25. In section 17 of the principal Act,—

Amendment of section 17.

(a) in sub-section (1), for the words "banking company incorporated in India", the words "banking company incorporated in India or banking co-operative society registered in India under any law relating to co-operative societies for the time being in force" shall be substituted;

(b) in sub-sections (1A) and (2), for the words "banking company" wherever they occur, the words "banking company or banking co-operative society" shall be substituted.

26. In section 18 of the principal Act,—

Amendment of section 18.

(A) for sub-section (1) and *Explanation* thereto, the following shall be substituted, namely:—

"(1) Every banking company or banking co-operative society, not being a scheduled bank, shall maintain in India by way of cash reserves, in the manner as may be prescribed, an amount, not less than such per cent. as may be notified by the Reserve Bank in the Official Gazette, of the total of its demand and time liabilities in India as on the last Friday of the second preceding fortnight and shall submit to the Reserve Bank before the twentieth day of every month a return showing the amount so held on alternate Fridays during a month with particulars of its demand and time liabilities in India on such Fridays or if any such Friday is a public holiday under the Negotiable Instruments Act, 1881, at the close of business on the preceding working day.

Explanation.—In this section and in section 24,—

(a) "liabilities in India" shall not include—

(i) the paid-up capital or the reserves or any credit balance in the profit and loss account of the banking company or banking co-operative society;

26 of 1881.

(ii) any advance taken from the Reserve Bank or from such bank or financial institutions as may be specified by the Reserve Bank;

(iii) in case of regional rural banks also, any loans taken by such banks from its Sponsor Banks;

(b) "fortnight" shall mean the period from Saturday to the second following Friday, both days inclusive;

(c) "net balance in current account" shall, in relation to a banking company or a banking co-operative society, mean the excess, if any, of the aggregate of the credit balance in current account maintained by that banking company or banking co-operative society with the State Bank of India or a subsidiary bank or a corresponding new bank over the aggregate of the credit balances in current account held by the said bank with such banking company or banking co-operative society;

(d) for the purposes of computation of liabilities, the aggregate of the liabilities of a banking company or a banking co-operative society to the State Bank of India, a subsidiary bank, a corresponding new bank, a regional rural bank, another banking company or banking co-operative society or any other financial institution specified by the Reserve Bank in this behalf, shall be reduced by the aggregate of liabilities of all such banks and institutions to the banking company or banking co-operative society;'

(B) in sub-section (2), for the words "a banking company" at both the places where they occur, the words "a banking company or banking co-operative society" shall be substituted.

Substitution of new sections for sections 19 and 20.

Restriction on nature of subsidiary companies.

27. For sections 19 and 20 of the principal Act, the following sections shall be substituted, namely:—

'19. (1) A banking company or banking co-operative society shall not, except with the previous permission in writing of the Reserve Bank, form any subsidiary company except a subsidiary company formed for one or more of the following purposes, namely:—

(a) the undertaking of any business which under sub-section (1) of section 6 is permissible for a banking company or banking co-operative society to undertake; or

(b) the carrying on of the business of banking exclusively outside India; or

(c) the undertaking of such other business, which the Reserve Bank may consider to be conducive to the spread of banking in India or to be otherwise useful or necessary in the public interest.

Explanation.—For the purposes of section 8, a banking company or banking co-operative society shall not be deemed, by reason of its forming or having a subsidiary company, to be engaged indirectly in the business carried on by such subsidiary company.

(2) Save as provided in sub-section (1), no banking company or banking co-operative society shall hold shares in any company or co-operative society, whether as pledgee, mortgagee or absolute owner, of an amount exceeding thirty per cent. of the paid-up share capital of that company or co-operative society or thirty per cent. of its own paid-up share capital and reserves, whichever is less:

Provided that nothing contained in this sub-section shall apply to—

(i) shares acquired by a banking co-operative society in any co-operative society through funds provided by the State Government for that purpose;

(ii) in the case of a central co-operative bank, the holding of shares in the State co-operative bank to which such central co-operative bank is affiliated;

(iii) in the case of a primary co-operative bank, the holding of shares in the central co-operative bank to which such primary co-operative bank is affiliated or holding of shares in the State co-operative bank in the State in which such primary co-operative bank is registered:

Provided further that no banking co-operative society shall hold any shares in any company or any other co-operative society except with the prior approval of the Reserve Bank.

(3) Save as provided in sub-section (1), and notwithstanding anything contained in sub-section (2),—

(a) a banking company shall not hold shares, whether as pledgee, mortgagee or absolute owner, in any company or co-operative society in the management of which any managing director or manager of the banking company is in any manner concerned or interested;

(b) a banking co-operative society shall not, after the expiry of one year from the date of commencement of the Banking Regulation (Amendment) and Miscellaneous Provisions Act, 2003, hold shares whether as pledgee, mortgagee or absolute owner, in any company or co-operative society in the management of which any managing director or manager of the banking co-operative society is in any manner concerned or interested.

20. (1) Notwithstanding anything to the contrary contained in section 77 of the Companies Act, 1956 or any other law for the time being in force, no banking company or banking co-operative society shall—

Restrictions
on loans and
advances.

(a) grant any loans or advances on the security of its own shares; or

(b) enter into any commitment for granting any loan or advance to or on behalf of—

(i) any of its directors, or

(ii) any firm in which any of its directors is interested as partner, manager, employee or guarantor, or

(iii) any company (not being a subsidiary of the banking company or a company registered under section 25 of the Companies Act, 1956 or a Government company), of which or the subsidiary or the holding company of which, any of the directors of the banking company is the director, manager, employee or guarantor, or in which he holds substantial interest, or

(iv) any co-operative society (not being a subsidiary of a banking co-operative society) of which any of the directors of the banking co-operative society is the director, manager, employee or guarantor, or in which he holds substantial interest, or

(v) any individual in respect of whom any of its directors is a partner or guarantor, or

(vi) any relative of its directors; or

(c) make any connected lending.

(2) Where any loan or advance has been granted by a banking company or banking co-operative society to any person prior to his becoming a director of such banking company or banking co-operative society or to a party as referred to in clause (b) of sub-section (1), and there is a default in repayment of such loans or advances and such default continues for a period of six months, such director shall cease to be a director of that banking company or banking co-operative society, as the case may be, and shall not be eligible to be appointed as a director of any banking company or banking co-operative society for a period of five years.

1 of 1956.

1 of 1956.

(3) If any question arises whether any transaction is a loan or advance for the purposes of this section, it shall be referred to the Reserve Bank, whose decision thereon shall be final.

Explanation I.—For the purposes of this section,—

(a) “associate” means an individual, a firm or a company or a co-operative society which holds more than ten per cent. voting right of a banking company or banking co-operative society;

(b) “connected lending” means granting of loans or advances by a banking company or banking co-operative society to—

(i) companies or co-operative societies under the same management as that of the banking company or banking co-operative society; or

(ii) a joint venture; or

(iii) an associate; or

(iv) a holding company;

(c) “director” includes a member of any board or committee in India constituted by a banking company or banking co-operative society for the purpose of managing, or for the purpose of advising it in regard to the management of all or any of its affairs;

(d) “joint venture” means an arrangement in terms of which a banking company or banking co-operative society, whether with or without capital contribution, undertakes a business or commercial activity along with one or more companies or co-operative societies with the objective of participating in or sharing the risks and rewards in connection with the aforesaid activities;

(e) “loan or advance” shall not include any transaction which the Reserve Bank may, having regard to the nature of the transaction, the period within which, and the manner and circumstances in which, any amount due on account of the transaction is likely to be realised, the interest of the depositors and other relevant considerations, specify by general or special order as not being a loan or advance;

(f) “relative” has the same meaning as assigned to it or under section 6 of the Companies Act, 1956;

1 of 1956.

(g) two companies shall be deemed to be under the same management —

(i) if the managing director or manager of one company is the managing director or manager of the other company; or

(ii) if a majority of the directors of one company constitute, or at any time within the six months immediately preceding constituted, a majority of the directors of the other company; or

(iii) if not less than one-third of the total voting rights with respect to any matter relating to each of the two companies is exercised or controlled by the same individual or company; or

(iv) if the holding company of the one company is under the same management as that of the other company within the meaning of clause (i), clause (ii) or clause (iii); or

(v) if one or more directors of the one company while holding, whether by themselves or together with their relatives, the majority of shares in that company also hold, whether by themselves or together with their relatives, the majority of shares in the other company.

(h) two co-operative societies shall be deemed to be under same management—

(i) if the managing director or manager of one co-operative society is the managing director or manager of the other co-operative society; or

(ii) if the majority of the directors of the one co-operative society constitute, or any time within the six months immediately preceeding constituted, a majority of the directors of the other co-operative society; or

(iii) if not less than one-third of the total voting rights with respect to any matter relating to each of the two co-operative societies is exercised or controlled by the same individual or co-operative societies; or

(iv) if one or more directors of the one co-operative society while holding, whether by themselves or together with their relatives, the majority of shares in that co-operative society also hold, whether by themselves or together with their relatives, the majority of shares in the other co-operative society.’

28. In section 20A of the principal Act, in sub-section (1),—

Amendment
of section
20A.

(a) in the opening portion,—

(i) for the words and figures “the Companies Act, 1956”, the words and figures “the Companies Act, 1956 or any other law for the time being in force” shall be substituted;

(ii) for the words “banking company”, the words “banking company or banking co-operative society” shall be substituted;

(b) for clause (a), the following clause shall be substituted, namely:—

“(a) any of its past or present directors, or;”;

(c) in clause (b), for the words “or company”, the words “company or co-operative society” shall be substituted.

29. For section 21 of the principal Act, the following section shall be substituted, namely:—

Substitution of
new section
for section 21.

“21. (1) Where the Reserve Bank is satisfied that it is necessary or expedient in the public interest or in the interests of depositors or banking policy so to do, it may determine the policy in relation to advances to be followed by banking companies or banking co-operative societies generally or by any banking company or banking co-operative society in particular, and when the policy has been so determined, all banking companies or the banking company concerned, as the case may be, or banking co-operative societies or banking co-operative society concerned, as the case may be, shall be bound to follow the policy as so determined.

Power of
Reserve Bank
to control
advances by
banking
companies or
banking
co-operative
societies.

(2) Without prejudice to the generality of the power vested in the Reserve Bank under sub-section (1), the Reserve Bank may give directions to banking companies or banking co-operative societies either generally or to any banking company or group of banking companies or banking co-operative society or group of banking co-operative societies, in particular, as to—

(a) the purposes for which advances may or may not be made,

(b) the margins to be maintained in respect of secured advances,

(c) the maximum amount of advances or other financial accommodation which, having regard to the paid-up capital, reserves and deposits of a banking

company or banking co-operative society and other relevant considerations, may be made by that banking company or banking co-operative society to any company, firm, association of persons or individual or any one party,

(d) the maximum amount up to which, having regard to the considerations referred to in clause (c), guarantees may be given by a banking company or banking co-operative society on behalf of any one company or co-operative society, firm, association of persons or individual or any one party, and

(e) the rate of interest and other terms and conditions on which advances or other financial accommodation may be made or guarantees may be given.

(3) Every banking company or banking co-operative society shall be bound to comply with any directions given to it under this section.”

Amendment of
section 21A.

30. In section 21A of the principal Act, for the words “banking company” at both the places where they occur, the words “banking company or banking co-operative society” shall be substituted. .

Substitution of
new section
for section 22.

31. For section 22 of the principal Act, the following section shall be substituted, namely:—

Licensing of
banking
companies
and banking
co-operative
societies.

“22. (1) Save as hereinafter provided, no company or co-operative society shall carry on banking business in India unless it holds a licence issued in that behalf by the Reserve Bank and any such licence may be issued subject to such conditions as the Reserve Bank may think fit to impose:

Provided that a co-operative credit society, which is carrying on the business of banking or business of banking and other business on the date of the commencement of the Banking Regulation (Amendment) and Miscellaneous Provisions Act, 2003, may continue to carry on its banking business for a period not exceeding three years from such commencement:

Provided further that the co-operative credit society referred to in the first proviso which carries on only business of banking shall wind up its business of banking within the period specified in that proviso and thereafter it shall cease to exist:

Provided also that the co-operative credit society referred to in the first proviso which carries on business of banking and other business shall wind up its business of banking within the period specified in that proviso.

(2) Every banking company in existence on the commencement of this Act, before the expiry of six months from such commencement, and every other company before commencing banking business in India shall apply in writing to the Reserve Bank for a licence under this section:

Provided that in the case of a banking company in existence on the commencement of this Act, nothing in sub-section (1) shall be deemed to prohibit the company from carrying on banking business until it is granted a licence in pursuance of this section or is by notice in writing informed by the Reserve Bank that a licence cannot be granted to it:

Provided further that the Reserve Bank shall not give a notice as aforesaid to a banking company in existence on the commencement of this Act before the expiry of the three years referred to in sub-section (6) of section 11 or of such further period as the Reserve Bank may, under that sub-section, think fit to allow.

(3) Every banking co-operative society in existence on the commencement of the Banking Regulation (Amendment) and Miscellaneous Provisions Act, 2003, and not having licence under this section, before the expiry of six months from such commencement and every other co-operative society before commencing banking business in India, shall apply in writing to the Reserve Bank for a licence under this section:

Provided that in the case of a banking co-operative society in existence on the commencement of the Banking Regulation (Amendment) and Miscellaneous Provisions Act, 2003, nothing in sub-section (1) shall be deemed to prohibit the co-operative society from carrying on banking business until it is granted a licence in pursuance of this section or is by notice in writing informed by the Reserve Bank that the licence cannot be granted to it;

Provided further that the Reserve Bank shall not give a notice as aforesaid to a banking co-operative society in existence on the commencement of the Banking Regulation (Amendment) and Miscellaneous Provisions Act, 2003 before the expiry of three years referred to in sub-section (6) of section 11 or of such further period as the Reserve Bank may, under that sub-section, think fit to allow:

Provided also that nothing in sub-section (1) shall be deemed to prohibit a banking co-operative society which has come into existence as a result of the division of any banking co-operative society from carrying on banking business until it is granted a licence in pursuance of this section or by notice in writing informed by the Reserve Bank that the licence cannot be granted to it;

(4) Before granting any licence under this section, the Reserve Bank may require to be satisfied by an inspection of the books of the company or co-operative society or otherwise that the following conditions are fulfilled, namely:—

(a) that the company or co-operative society is or will be in a position to pay its present or future depositors in full as their claims accrue;

(b) that the affairs of the company or co-operative society are not being, or are not likely to be conducted in a manner detrimental to the interests of its present or future depositor;

(c) that the general character of the proposed management of the company or co-operative society will not be prejudicial to the public interest or the interest of its depositors;

(d) that the company or co-operative society has adequate capital structure and earning prospects;

(e) that the public interest will be served by the grant of a licence to the company or co-operative society to carry on banking business in India;

(f) that having regard to the banking facilities available in the proposed principal area of operations of the company or co-operative society, the potential scope for expansion of banks already in existence in the area and other relevant factors, the grant of the licence would not be prejudicial to the operation and consolidation of the banking system consistent with monetary stability and economic growth;

(g) any other condition, the fulfilment of which would, in the opinion of the Reserve Bank, is necessary to ensure that the carrying on of banking business in India by the company or co-operative society will not be prejudicial to the public interest or the interests of the depositors.

(5) Before granting any licence under this section to a banking company incorporated outside India, the Reserve Bank may require to be satisfied by inspection of the books of the company or otherwise that,—

(a) the conditions specified in sub-section (4) are fulfilled;

(b) the carrying on of banking business by such company in India will not be prejudicial to the public interest or to the interest of its depositors, both present or future;

(c) the Government of the country in which such banking company is incorporated does not discriminate in any way against banking companies registered in India or banking co-operative societies registered in India under any law relating to co-operative society for the time being in force.

(d) the banking company complies with all the provisions of this Act applicable to banking companies incorporated outside India;

(e) the supervisory authority of the country in which such banking company is incorporated, is satisfied with the prudent management and overall financial soundness of such banking company;

(f) the Reserve Bank is satisfied with the nature and scope of supervision exercised by the supervisory authority of the country in which such banking company is incorporated over the parent banking company;

(g) such banking company allows the Reserve Bank to call for returns and information from it and inspection of its books of accounts and documents in the country in which it is incorporated to satisfy itself that such banking company is financially sound and complies with requirements laid down in this Act.

(6) The Central Government may, if it is of the opinion that the grant of licence to a banking company incorporated outside India is against the security of the State or friendly relations with foreign States or against the public interest, it may direct the Reserve Bank not to grant the licence to such banking company or cancel its licence, if granted to it.

(7) The Reserve Bank may cancel a licence granted to a banking company or banking co-operative society under this section—

(i) if the company or co-operative society ceases to carry on banking business in India; or

(ii) if the company or co-operative society at any time fails to comply with any of the conditions imposed upon it under sub-section (1); or

(iii) if at any time, any of the conditions referred to in sub-section (4) and sub-section (5) is not fulfilled;

(iv) if the banking company or banking co-operative society fails to comply with the directions issued under section 35A;

(v) in case of a banking company incorporated outside India, if so directed by the Central Government under sub-section (6):

Provided that before cancelling a licence under clause (ii) or clause (iii) or clause (iv) of this sub-section on the ground that the banking company or banking co-operative society has failed to comply with or has failed to fulfil any of the conditions or directions referred to therein, the Reserve Bank, unless it is of opinion that the delay will be prejudicial to the interests of the company's or co-operative society's depositors or the public, shall grant to the company or co-operative society, on such terms as it may specify, an opportunity of taking the necessary steps for complying with or fulfilling such condition.

(8) Any banking company or banking co-operative society aggrieved by the decision of the Reserve Bank cancelling a licence under this section may, within thirty days from the date on which such decision is communicated to it, appeal to the Central Government.

(9) The decision of the Central Government where an appeal has been preferred to it under sub-section (8) or of the Reserve Bank where no such appeal has been preferred shall be final."

32. In section 23 of the principal Act,—

Amendment of
section 23.

(a) in sub-section (1),—

(i) in clause (a), for the words “banking company shall”, the words “banking company or banking co-operative society shall” shall be substituted;

(ii) in clause (b), for the words “banking company incorporated in India”, the words “banking company incorporated in India or banking co-operative society registered in India under any law relating to co-operative societies for the time being in force” shall be substituted;

(iii) in the proviso, for the words “the banking company already”, the words “the banking company or banking co-operative society already” shall be substituted;

(b) in sub-section (2), for the words “history of the company,” the words “history of the company or co-operative society” shall be substituted;

(c) in sub-section (3), after the words “particular case” occurring at the end, the words “having regard to the banking policy or public interest” shall be inserted;

(d) in sub-section (4), for the words “banking company”, at both the places where they occur, the words “banking company or banking co-operative society” shall be substituted;

(e) in sub-section (4A), for the words “regional rural bank” at both the places where they occur, the words “regional rural bank or banking co-operative society other than a primary co-operative bank” shall be substituted.

33. In section 24 of the principal Act, —

Amendment
of section 24.

(a) sub-sections (1) and (2) shall be omitted;

(b) for sub-section (2A), the following sub-section shall be substituted, namely:—

“(2A) A schedule bank, in addition to the average daily balance which it is, or may be, required to maintain under section 42 of the Reserve Bank of India Act, 1934 and every other banking company or banking co-operative society, in addition to the cash reserve which it is required to maintain under section 18 of this Act, shall maintain in India assets the value of which shall not be less than such percentage of the total of its demand and time liabilities in India as on the last Friday of the second preceding fortnight as the Reserve Bank may, from time to time, by notification in the Official Gazette, specify, and such assets shall be maintained in such manner as may be specified by the Reserve Bank in that notification.”;

(c) sub-section (2B) shall be omitted;

(d) in sub-section (3),—

(i) for the words “banking company”, the words “banking company or banking co-operative society” shall be substituted;

(ii) in the proviso, for the words “Regional Rural Bank”, the words “Regional Rural Bank and banking co-operative society other than a primary co-operative bank” shall be substituted;

(e) in sub-sections (4) to (8), for the words “banking company” wherever they occur, the words “banking company or banking co-operative society” shall be substituted.

34. In section 25 of the principal Act,—

Amendment of
section 25.

(a) for the words “banking company” wherever they occur, the words, “banking company or banking co-operative society” shall be substituted;

(b) in sub-section (2), in the proviso, for the words "regional rural bank", the words "regional rural bank and banking co-operative society other than a primary co-operative bank" shall be substituted.

Substitution
of new
sections for
section 26.

35. For section 26 of the principal Act, the following sections shall be substituted, namely:—

Return of
unclaimed
deposits.

'26. Every banking company or banking co-operative society shall within thirty days after the expiry of a period of twelve months ending with such date as the Reserve Bank may, by notification in the Official Gazette, specify in this behalf, submit a return in the prescribed form and manner to the Reserve Bank at the end of such specified year of all accounts in India which have not been operated for ten years:

Provided that in the case of money deposited for a fixed period, the said term of ten years shall be reckoned from the date of expiry of such fixed period:

Provided further that every regional rural bank and banking co-operative society other than a primary co-operative bank shall also furnish a copy of the said return to the National Bank.

Establishment
of Depositor
Protection
Fund.

26A. (1) The Reserve Bank shall establish a fund to be called the Depositor Protection Fund (hereinafter referred to in this section as the "Fund").

(2) There shall be credited to the Fund the amount to the credit of any account in India with a banking company or banking co-operative society which has not been operated upon for a period of ten years or any deposit remaining unclaimed for more than ten years, within three months from the expiry of the said period of ten years:

Provided that nothing contained in this sub-section shall prevent a depositor to claim his deposit from the banking company or banking co-operative society after the expiry of said period of ten years and such company or co-operative society shall be liable to repay his deposit.

(3) Where the banking company or banking co-operative society has paid outstanding amount from the account or deposit referred to in sub-section (2) above, or allowed operation of such account or deposit, such banking company or banking co-operative society may apply for refund of such amount in such manner as may be specified by the authority or committee referred to in sub-section (5).

(4) The Fund shall be utilised for promotion of depositors interests and for such other purposes as may be prescribed.

(5) The Reserve Bank shall, by notification in the Official Gazette, specify an authority or committee, with such members as the Reserve Bank may appoint, to administer the Fund, and maintain separate accounts and other relevant records in relation to the Fund in such forms as may be prescribed.

(6) It shall be competent for the authority or committee appointed under sub-section (5) to spend moneys out of the Fund for carrying out the objects for which the Fund has been established.'

Amendment
of section 27.

36. In section 27 of the principal Act,—

(a) for the words "banking company" wherever they occur, the words "banking company or banking co-operative society" shall be substituted;

(b) for sub-section (3), the following sub-section shall be substituted, namely:—

"(3) Every regional rural bank and every banking co-operative society other than a primary co-operative bank shall submit a copy of their return, which they submit to the Reserve Bank under sub-section (1), also to the National Bank and the powers exercisable by the Reserve Bank under sub-section (2) may also be exercised by the National Bank in relation to regional rural banks and banking co-operative societies other than primary co-operative banks."

37. In section 29 of the principal Act,—

(a) in sub-section (1), for the words “every banking company incorporated in India”, the words “every banking company incorporated in India and every banking co-operative society registered in India under any law relating to the registration of co-operative societies” shall be substituted;

(b) in sub-section (2),

(i) for the words “a banking company incorporated in India”, the words “a banking company incorporated in India or banking co-operative society registered in India under any law relating to the registration of co-operative societies” shall be substituted;

(ii) for the words “the company” occurring at both the places, the words “the company or co-operative society” shall be substituted;

(c) in sub-section (3A),—

(i) for the words and figures “Companies Act, 1956”, the words and figures “Companies Act, 1956 or any other law for the time being in force” shall be substituted;

(ii) for the words “in the case of a banking company”, the words “in the case of a banking company or banking co-operative society” shall be substituted.

38. After section 29 of the principal Act, the following section shall be inserted, namely:—

“29A. (1) There shall be attached to the balance sheet of a banking company or banking co-operative society having a subsidiary or subsidiaries at the end of the financial year as at which the balance sheet of the company or co-operative society is made out, the following documents in respect of such subsidiary or of each such subsidiary, as the case may be:—

- (a) a copy of the balance sheet of the subsidiary;
- (b) a copy of its profit and loss account;
- (c) a copy of the report of its Board of directors;
- (d) a copy of the report of its auditors;
- (e) a statement of the banking company's or banking co-operative society's interest in the subsidiary as specified in sub-section (3);
- (f) the statement referred to in sub-section (5), if any; and
- (g) the report referred to in sub-section (6), if any.

(2) (a) The balance sheet referred to in clause (a) of sub-section (1) shall be made out in accordance with the requirements of this Act, or any other law for the time being in force —

(i) as at the end of the financial year of the subsidiary, where such financial year coincides with the financial year of the holding banking company or banking co-operative society;

(ii) as at the end of the financial year of the subsidiary last before that of the holding banking company or banking co-operative society where the financial year of the subsidiary does not coincide with that of the banking company or banking co-operative society;

(b) The profit and loss account and the reports of the Board of directors and of the auditors, referred to in clauses (b), (c) and (d) of sub-section (1), shall be made out, in accordance with the requirements of this Act or any other law for the time being in force, for the financial year of the subsidiary referred to in clause (a).

Amendment of
section 29.

Insertion of
new section
29A.
Balance sheet
of banking
company or
banking co-
operative
society to
include
certain
particulars as
to its
subsidiaries.

(c) Where the financial year of the subsidiary does not coincide with that of the banking company or banking co-operative society, the financial year aforesaid of the subsidiary shall not end on a day which precedes the day on which the banking company's or banking co-operative society's financial year ends by more than six months.

(d) Where the financial year of a subsidiary is shorter in duration than that of banking company or banking co-operative society, references to the financial year of the subsidiary in clauses (a), (b) and (c) shall be construed as reference to two or more financial years of the subsidiary the duration of which, in the aggregate, is not less than the duration of the banking company's or banking co-operative society's financial year.

(3) The statement referred to in clause (e) of sub-section (1) shall specify—

(a) the extent of the holding banking company's or banking co-operative society's interest in the subsidiary at the end of the financial year or of the last of the financial years of the subsidiary referred to in sub-section (2);

(b) the net aggregate amount, so far as it concerns shareholding of the holding banking company or banking co-operative society and is not dealt with in the holding banking company's or banking co-operative society's accounts, of the subsidiary's profit after deducting its losses or *vice versa*—

(i) for the financial year or years of the subsidiary aforesaid; and

(ii) for the previous financial years of the subsidiary since it became the holding banking company's or banking co-operative society's subsidiary;

(c) the net aggregate amount of the profits of the subsidiary after deducting its losses or *vice versa* —

(i) for the financial year or years of the subsidiary aforesaid; and

(ii) for the previous financial years of the subsidiary since it became the holding banking company's or banking co-operative society's subsidiary;

so far as those profits are dealt with, or provision is made for those losses, in the banking company's or banking co-operative society's accounts.

(4) Clauses (b) and (c) of sub-section (3) shall apply only to profits and losses of the subsidiary which may properly be treated in the banking company's or banking co-operative society's accounts as revenue profits or losses, and the profits or losses attributable to any shares in a subsidiary for the time being held by the holding banking company or banking co-operative society or any other of its subsidiaries shall not (for that or any other purpose) be treated as aforesaid so far as they are profits or losses for the period before the date on or as from which the shares were acquired by the banking company or banking co-operative society or any of its subsidiaries and for the purpose of determining whether any profits or losses are to be treated as profits or losses for the said period, the profit or loss for any financial year of the subsidiary may, if it is not practicable to apportion it with reasonable accuracy by reference to the facts, be treated as accruing from day to day during that year and be apportioned accordingly.

(5) Where the financial year or years of a subsidiary referred to in sub-section (2) do not coincide with the financial year of the holding banking company or banking co-operative society, a statement containing information on the following matters shall also be attached to the balance sheet of the banking company or banking co-operative society—

(a) whether there has been any, and, if so, what change in the holding banking company's or banking co-operative society's interest in the subsidiary between the end of the financial year or of the last of the financial years of the

subsidiary and the end of the banking company's or banking co-operative society's financial year;

(b) details of any material changes, which have occurred between the end of the financial year or of the last of the financial years of the subsidiary and the end of the holding banking company's or banking co-operative society's financial year, in respect of—

(i) the subsidiary's fixed assets;

(ii) its investments;

(iii) the moneys lent by it;

(iv) the moneys borrowed by it for any purpose other than that of meeting current liabilities.

(6) If, for any reason, the Board of directors of the holding banking company or banking co-operative society is unable to obtain information on any of the matters required to be specified by sub-section (4), a report in writing to that effect shall be attached to the balance sheet of the banking company or banking co-operative society.

(7) The documents referred to in clauses (e), (f) and (g) of sub-section (1) shall be signed by the persons by whom the balance sheet of the holding banking company or banking co-operative society is required to be signed.

(8) The Reserve Bank may, by notification, on the application or with the consent of the Board of directors of the banking company or banking co-operative society, direct that in relation to any subsidiary, the provisions of this section shall not apply, or shall apply to such extent as may be specified in the direction.”.

39. In section 30 of the principal Act,—

Amendment of
section 30.

(a) for sub-section (1), the following sub-section shall be substituted, namely:—

“(1) The balance sheet and the profit and loss account prepared in accordance with section 29 shall be audited,—

(a) in respect of a banking company; and

(b) in respect of a banking co-operative society having demand and time liabilities aggregating one hundred crore rupees;

by a person duly qualified under any law for the time being in force to be an auditor.”;

(b) in sub-section (1A), for the words, “banking company”, the words “banking company or banking co-operative society” shall be substituted;

(c) in sub-section (1B),—

(i) for the words “banking company” at both the places where they occur, the words “banking company or banking co-operative society” shall be substituted;

(ii) for the words “banking company's accounts”, the words “banking company's or banking co-operative society's accounts” shall be substituted;

(iii) for the words “thereof to the company” occurring at the end, the words “thereof to the company or society” shall be substituted;

(d) in sub-section (1C), for the words “banking company”, the words “banking company or banking co-operative society” shall be substituted;

(e) after sub-section (1C), the following sub-section shall be inserted, namely:—

“(1D) The Reserve Bank may, on being satisfied that it is necessary so to do in the public interest or in the interest of the depositors or for the proper

assessment of the books of account, issue directions to the auditor of the banking company or banking co-operative society on the matters relating to the balance sheet, profit and loss account and disclosure of liabilities in the books of account or any other matter relating thereto”;

(f) in sub-section (2), for the words “banking company”, the words “banking company or banking co-operative society” shall be substituted;

(g) in sub-section (3),—

(i) for the words “banking company incorporated in India”, the words, “banking company incorporated in India or banking co-operative society registered in India under any law relating to registration of co-operative societies in India” shall be substituted;

(ii) in clauses (b), (c) and (e), for the words “the company”, wherever they occur, the words “the company or society” shall be substituted;

(h) after sub-section (3), the following sub-sections shall be inserted, namely:—

“(4) It shall be the duty of the auditor of a banking company or banking co-operative society to enquire and state in his audit report whether or not the banking company or banking co-operative society has complied with the provisions of this Act or any directions, notifications or order issued thereunder, and has furnished to the Reserve Bank such statements, information or particulars as are required to be furnished under the provisions of this Act.

(5) Where an auditor is satisfied on enquiry that a banking company or banking co-operative society has not complied with any provisions of this Act or any direction, notification or order issued thereunder or failed to furnish statements, information or particulars as are required to be furnished under the provisions of this Act, he shall make a report to the Reserve Bank of such non-compliance of the provisions of this Act or directions, notifications or orders issued by the Reserve Bank or non-submission of any other statement, information or particulars as required by the Reserve Bank in this regard.

(6) Where the auditor has made or intend to make a report to the Reserve Bank under sub-section (5), he shall include in the case of a banking company in his report under sub-section (2) of section 227 of the Companies Act, 1956, the contents of the report which he has made or intended to make to the Reserve Bank.”.

1 of 1956.

Amendment
of section 31.

40. In section 31 of the principal Act, in the second proviso, for the words “regional rural bank”, the words “regional rural bank and banking co-operative society other than a primary co-operative bank” shall be substituted.

Omission of
section 34.

41. Section 34 of the principal Act shall be omitted.

Amendment
of section
34A.

42. In section 34A of the principal Act, in sub-sections (1) and (2) for the words “banking company”, wherever they occur, the words “banking company or banking co-operative society” shall be substituted.

Amendment
of section 35.

43. In section 35 of the principal Act,—

(a) for sub-sections (1), (1A) and (2), the following sub-sections shall be substituted, namely:—

“(1) Notwithstanding anything to the contrary contained in section 235 of the Companies Act, 1956, or any other law for the time being in force, the Reserve Bank, at any time, may and on being directed so to do by the Central Government, shall cause an inspection to be made by one or more of its officers of any banking company or banking co-operative society or any subsidiary formed by

1 of 1956.

it under sub-section (1) of section 19 and its books and accounts; and the Reserve Bank shall supply to the banking company or banking co-operative society a copy of its report on such inspection:

Provided that the Reserve Bank may, if it consider it necessary or expedient so to do, cause an inspection to be made of a primary co-operative bank under this sub-section by one or more officers of a state co-operative bank in the State, in which such primary co-operative bank is registered.

(1A) Notwithstanding anything to the contrary contained in any law for the time being in force and without prejudice to the provisions of sub-section (1), the Reserve Bank, at any time, may also cause.

(i) a scrutiny to be made by any one or more of its officers of the affairs of any banking company or banking co-operative society or any subsidiary formed by it under sub-section (1) of section 19 and its books and accounts; and

(ii) a copy of the report of the scrutiny made under clause (i) shall be furnished to the banking company or banking co-operative society if the banking company or banking co-operative society makes a request for the same or if any adverse action is contemplated against the banking company or banking co-operative society on the basis of the scrutiny.

(2) It shall be the duty of every director or other officer or employee of the banking company or banking co-operative society or a subsidiary to produce to any officer making an inspection under sub-section (1) or scrutiny under sub-section (1A) all such books, accounts and other documents in his custody or power and to furnish him with any statement and information relating to the affairs of the banking company or banking co-operative society or a subsidiary as the said officer may require of him within such time as the said officer may specify.

(b) in sub-section (3), for the words "employee of the banking company", the words "employee of the banking company or banking co-operative society" shall be substituted.

(c) in sub-section (4),—

(i) in the opening portion,—

(a) for the words, "the affairs of the banking company", the words "the affairs of the banking company or banking co-operative society" shall be substituted;

(b) for the words, "opportunity to the banking company", the words "opportunity to the banking company or banking co-operative society" shall be substituted;

(ii) in clause (a), for the words "the banking company", the words "banking company or banking co-operative society" shall be substituted;

(d) in sub-section (5), for the words, "the banking company", the words "banking company or banking co-operative society" shall be substituted;

(e) for sub-section (6), the following sub-section shall be substituted, namely:—

(6) The powers exercisable by the Reserve Bank under this section in relation to regional rural banks or banking co-operative society other than primary co-operative banks may (without prejudice to the exercise of such powers by the Reserve Bank, in relation to any regional rural bank or any banking co-operative society other than a primary co-operative bank, whenever it considers necessary so to do) be exercised by the National Bank in relation to the regional rural banks

or banking co-operative societies other than primary co-operative banks and accordingly sub-sections (1), (1A), (2), (3), (4) and (5) shall apply in relation to regional rural banks or banking co-operative societies other than primary co-operative banks as if every reference therein to the Reserve Bank included also a reference to the National Bank.

Explanation.—For the purposes of this section, the expression “banking company” shall include—

(i) in the case of banking company incorporated outside India, all its branches in India, and

(ii) in the case of a banking company incorporated in India or banking co-operative society registered under any law relating to the registration of co-operative societies in India—

(a) all its subsidiaries formed for the purpose of carrying on the business of banking exclusively outside India; and

(b) all its branches whether situated in India or outside India’.

Amendment
of section
35A.

44. In section 35A of the principal Act,—

(a) for the words “banking company”, wherever they occur, the words “banking company or banking co-operative society” shall be substituted;

(b) for the words “banking companies” at both the places where they occur, the words “banking companies or banking co-operative societies” shall be substituted;

Amendment
of section
35B.

45. In section 35B of the principal Act,—

(a) in sub-section (1),—

(i) in the opening portion, for the words “banking company”, the words “banking company or banking co-operative society” shall be substituted;

(ii) in clause (a), for the words “company’s memorandum or articles of association or in an agreement entered into by it or in any resolution passed by the company”, the words “company’s memorandum or articles of association or the society’s bye-laws or in an agreement entered into by it or in any resolution passed by the company or co-operative society” shall be substituted;

(iii) in sub-section (3), for the words “the banking company” the words “banking company or banking co-operative society” shall be substituted.

Amendment
of section 36.

46. In section 36 of the principal Act,—

(a) in sub-section (1),—

(i) in clause (a),—

(A) for the words “banking company” at both the places where they occur, the words “banking company or banking co-operative society” shall be substituted;

(B) for the words “banking companies”, the words “banking companies or banking co-operative societies” shall be substituted;

(ii) in clause (b),—

(A) for the words “the companies concerned”, the words “the companies or co-operative societies concerned” shall be substituted;

(B) for the words “banking companies”, the words “banking companies or banking co-operative societies” shall be substituted;

(iii) in clauses (c) and (d), for the words "banking company" wherever they occur, the words "banking company or banking co-operative society" shall be substituted;

(b) in sub-section (3), for the words "banking companies", the words "banking companies or banking co-operative societies" shall be substituted.

47. In section 36A of the principal Act,—

Amendment
of section
36A.

(i) for sub-section (1), the following sub-section shall be substituted, namely:—

"(1) The provisions of section 11, sub-section (1) of section 12 and sections 17, 18, 24 and 25 shall not apply to —

33 of 1959.

(a) (i) a banking company which whether before or after the commencement of the Banking Companies (Amendment) Act, 1959; and

23 of 1965.

(ii) a banking co-operative society which, whether before or after the commencement of the Banking Laws (Application to Co-operative Societies) Act, 1965,

has been refused a licence under section 22 or prohibited from accepting fresh deposits by a compromise, arrangement or scheme sanctioned by a court or by any order made in any proceeding relating to such compromise, arrangement or scheme or prohibited from accepting deposits by virtue of any alterations made in its memorandum or bye-laws; or

33 of 1959.

(b) a banking company whose licence has been cancelled under section 22 whether before or after the commencement of the Banking Companies (Amendment) Act, 1959.";

(ii) in sub-section (2), for the words "the banking company", wherever they occur, the words "banking company or banking co-operative society" shall be substituted.

48. In section 36AA of the principal Act,—

Amendment
of section
36AA.

(a) for the words "the banking company" wherever they occur, the words "banking company or banking co-operative society" shall be substituted;

(b) in sub-section (5), for the words "with fine which may extend to two hundred and fifty rupees for each day during which such contravention continues", the words "with imprisonment for a term not exceeding two years or with fine which may extend to five crore rupees, or with both" shall be substituted;

(c) in sub-section (8), for the words "memorandum or articles of association", the words "memorandum or articles of association or bye-laws" shall be substituted.

49. In section 36AB of the principal Act, for the words "the banking company" wherever they occur, the words "banking company or banking co-operative society" shall be substituted.

Amendment
of section
36AB.

50. After Part IIA, the following shall be inserted, namely:—

Insertion of
new Part
IIAB.

"PART II AB

SUPERSESSION OF BOARD OF BANKING COMPANIES AND BANKING CO-OPERATIVE SOCIETIES

36ACA. (1) Where the Reserve Bank is satisfied that in the public interest or for preventing the affairs of the banking company or banking co-operative society being managed in a manner detrimental to the interest of the depositors or the banking company or banking co-operative society or for securing the proper management of any banking company or banking co-operative society, it is necessary so to do, the Reserve Bank may, for reasons to be recorded in writing, by order, published in the Official Gazette supersede the Board of directors of such banking company or banking co-operative society, for a period of time not exceeding six months, as may be specified

Supersession
of Board of
the banking
company or
banking co-
operative
society in
certain cases.

in the order, which may be extended from time to time, so, however, that total period shall not exceed twelve months:

Provided that before making any such order, the Reserve Bank shall give a reasonable opportunity to the Board of directors of such banking company or banking co-operative society to make representation against the proposed supersession and shall consider the representation, if any, of the Board of directors.

(2) The Reserve Bank may, on supersession of the Board of directors of the banking company or banking co-operative society under sub-section (1), appoint an Administrator for such period as it may determine.

(3) The Reserve Bank may issue such directions to the Administrator as it may deem appropriate and the Administrator shall be bound to follow such directions.

(4) Upon making of the order under sub-section (1) superseding the Board of directors of a bank—

(a) the chairman, managing director and other directors shall, as from the date of supersession, vacate their offices as such;

(b) all the powers, functions and duties, which may, by or under the provisions of the Companies Act, 1956 or this Act, or any other law for the time being in force be exercised or discharged, by or on behalf of the Board of directors of such banking company or banking co-operative society, or by a resolution passed in general meeting of that banking company or banking co-operative society, shall, until the Board of directors of such banking company or banking co-operative society is reconstituted under sub-section (7), be exercised and discharged by the Administrator appointed by the Reserve Bank under sub-section (2):

Provided that the power exercised by the Administrator shall be valid notwithstanding that such powers are exercisable by a resolution passed in the general meeting of the banking company or banking co-operative society.

(5) (a) The Reserve Bank may constitute a committee of three or more persons who have experience in law, finance, banking, administration or accountancy to assist the Administrator in discharge of his duties.

(b) The committee shall meet at such times and places and observe such rules of procedure as may be specified by the Reserve Bank.

(6) The salary and allowances to the Administrator and the members of the committee of the banking company or banking co-operative society shall be such as may be specified by the Reserve Bank and be payable by the concerned banking company or banking co-operative society;

(7) On and before the expiration of two months before expiry of the period of supersession specified in the order issued under sub-section (1), the Administrator of such banking company or banking co-operative society, shall call the general meeting of the banking company or banking co-operative society to elect new directors and reconstitute its Board of directors and any person who had vacated his office under clause (a) of sub-section (4), shall not be deemed to be disqualified for re-appointment.

(8) Notwithstanding anything contained in any law or in any contract, the memorandum or articles of association or bye-laws, on the removal of a person from office under this section, no person shall be entitled to claim any compensation for the loss or termination of office.

(9) The Administrator appointed under sub-section (2), shall vacate office immediately after the Board of director of such banking company or banking co-operative societies has been reconstituted.”.

51. For the Part IIB, the following Part shall be substituted, namely:—

'PART IIB

**PROHIBITION OF CERTAIN ACTIVITIES IN RELATION TO BANKING COMPANIES OR BANKING
CO-OPERATIVE SOCIETIES**

36AD. (1) No person shall —

(a) obstruct any person from lawfully entering or leaving any office or place of business of a banking company or a banking co-operative society or from carrying on any business there; or

(b) hold, within the office or place of business of any banking company or banking co-operative society, any demonstration which is violent or which prevents, or is calculated to prevent, the transaction of normal business of banking company or banking co-operative society; or

(c) act in any manner calculated to undermine the confidence of the depositors in the banking company or banking co-operative society.

(2) Whoever contravenes any provision of sub-section (1) without any reasonable excuses shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to rupees one thousand, or with both.

(3) For the purposes of this section, "banking company" includes the Reserve Bank, the Development Bank, the Exim Bank, the Reconstruction Bank, the National Housing Bank, the National Bank, the Small Industries Bank, the State Bank of India, a corresponding new bank, a regional rural bank and a subsidiary bank.'

52. In section 44A of the principal Act, after sub-section (7), the following sub-section shall be inserted, namely:—

'(8) In this section, "banking company with whom a banking company is proposed to be amalgamated" means and includes the State Bank of India or a subsidiary bank or a corresponding new bank.'

53. After section 44A of the principal Act, the following sections shall be inserted, namely:—

"44AA. (1) A banking company may be amalgamated with State Bank of India or subsidiary bank or a corresponding new bank in accordance with the procedure contained in section 44A.

(2) The State Bank of India or a subsidiary bank or a corresponding new bank shall, comply with the provisions of the State Bank of India Act, 1955 or the State Bank of India (Subsidiary Banks) Act, 1959 or the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 or the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1980, as the case may be, for amalgamation of any banking company with it and provisions of those Acts shall be in addition to, and not in derogation of the provisions contained in section 44A of this Act.

44AB. (1) A banking co-operative society may be amalgamated with another banking co-operative society in accordance with the procedure specified in section 44A.

(2) The provisions contained in sub-sections (1) to (7) of section 44A [except sub-sections (6A) and (6B)] relating to the amalgamation of a banking company with another banking company in this section shall, as far as may be, apply to the amalgamation of a banking co-operative society with another banking co-operative society.

Substitution of new Part for Part IIB.

Punishment for certain activities in relation to banking companies or banking co-operative societies.

Amendment of section 44A.

Insertion of new sections 44AA, 44AB and 44AC. Amalgamation of banking company with State Bank of India, or subsidiary bank or corresponding new bank.

Amalgamation of one banking co-operative society with another banking co-operative society.

23 of 1955.
38 of 1959.
5 of 1970.
40 of 1980.

Amalgamation of non-banking financial company with banking company.

44AC.(1) A non-banking financial company as defined in clause (f) of section 45-I of the Reserve Bank of India Act, 1934 may be amalgamated with a banking company in accordance with the procedure specified in section 44A. 2 of 1934.

(2) The provisions contained in sub-sections (1) to (7) of section 44A relating to the amalgamation of a banking company with another banking company in this section shall, as far as may be, apply to the amalgamation of a non-banking financial company with a banking company under this section."

Substitution of new section for section 45.

54. For section 45 of the principal Act, the following section shall be substituted, namely:—

Power of Reserve Bank to apply to Central Government for suspension of business by a banking company or a banking co-operative society and to prepare scheme of reconstruction or amalgamation.

'45. (1) Notwithstanding anything contained in the foregoing provisions of this Part or in any other law or any agreement or other instrument for the time being in force, where it appears to the Reserve Bank that there is a good reason so to do, the Reserve Bank may apply to the Central Government for an order of moratorium in respect of a banking company or banking co-operative society.

(2) The Central Government, after considering the application made by the Reserve Bank under sub-section (1), may make an order of moratorium staying the commencement or continuance of all actions and proceedings against the banking company or banking co-operative society for a fixed period of time on such terms and conditions as it thinks fit and proper and may from time to time extend the period so however that the total period of moratorium shall not exceed one year.

(3) Except as otherwise provided by any directions given by the Central Government in the order made by it under sub-section (2) or at any time, thereafter the banking company or banking co-operative society shall not, during the period of moratorium, make any payment to any depositors or discharge any liabilities or obligation to any other creditors.

(4) During the period of moratorium, if the Reserve Bank is satisfied that—

- (a) in the public interest; or
- (b) in the interests of the depositors; or
- (c) in order to secure the proper management of the banking company or banking co-operative society; or
- (d) in the interests of the banking system of the country as a whole,

it is necessary so to do, the Reserve Bank may prepare a scheme—

(i) for the reconstruction of the banking company or banking co-operative society; or

(ii) for the amalgamation of the banking company or banking co-operative society with any other banking institution (in this section referred to as "the transferee bank").

(5) The scheme aforesaid may contain provisions for all or any of the following matters, namely:—

(a) the constitution, name and registered office, the capital, assets, powers, rights, interests, authorities and privileges, the liabilities, duties and obligations of the banking company or banking co-operative society on its reconstruction, or, as the case may be, of the transferee bank;

(b) in the case of amalgamation of the banking company or banking co-operative society, the transfer to the transferee bank of the business, properties, assets and liabilities of the banking company or banking co-operative society on such terms and conditions as may be specified in the scheme;

(c) any change in the Board of directors, or the appointment of a new Board of directors, of the banking company or banking co-operative society on its reconstruction, or, as the case may be, of the transferee bank and the authority by whom, the manner in which, and the other terms and conditions on which, such change or appointment shall be made and in the case of appointment of a new Board of directors or of any director the period for which such appointment shall be made;

(d) the alteration of the memorandum and articles of association of the banking company or bye-laws of the banking co-operative society on its reconstruction or, as the case may be, of the transferee bank for the purpose of altering the capital thereof or for such other purposes as may be necessary to give effect to the reconstruction or amalgamation;

(e) subject to the provisions of the scheme, the continuation by or against the banking company or banking co-operative society on its reconstruction, or, as the case may be, the transferee bank, of any action or proceedings pending against the banking company or banking co-operative society immediately before the date of the order of moratorium;

(f) the reduction of the interest or rights which the members, depositors and other creditors have in or against the banking company or banking co-operative society before its reconstruction or amalgamation to such extent as the Reserve Bank considers necessary in the public interest or in the interest of the members, depositors and other creditors or for the maintenance of the business of the banking company or banking co-operative society;

(g) the payment in cash or otherwise to depositors and other creditors in full satisfaction of their claim—

(i) in respect of their interest or rights in or against the banking company or banking co-operative society before its reconstruction or amalgamation; or

(ii) where their interest or rights aforesaid in or against the banking company or banking co-operative society has or have been reduced under clause (f), in respect of such interest or rights as so reduced;

(h) the allotment to the members of the banking company or banking co-operative society for shares held by them therein before its reconstruction or amalgamation [whether their interest in such share has been reduced under clause (f) or not] of shares in the banking company or banking co-operative society on its reconstruction, or, as the case may be, in the transferee bank and where any members claim payment in cash and not allotment of shares, or where it is not possible to allot shares to any members, the payment in cash to those members in full satisfaction of their claim—

(i) in respect of their interest in shares in the banking company or banking co-operative society before its reconstruction or amalgamation; or

(ii) where such interest has been reduced under clause (f) in respect of their interest in shares as so reduced;

(i) the continuance of the services of all the employees of the banking company or banking co-operative society (excepting such of them as not being workmen within the meaning of the Industrial Disputes Act, 1947 are specifically mentioned in the scheme) in the banking company or banking co-operative society itself on its reconstruction, or as the case may be, in the transferee bank at the same remuneration and on the same terms and conditions of service,

which they were getting, or, as the case may be, by which they were being governed, immediately before the date of the order of moratorium:

Provided that the scheme shall contain a provision that—

(i) the banking company or banking co-operative society shall pay or grant not later than the expiry of the period of three years from the date on which the scheme is sanctioned by the Central Government, to the said employees the same remuneration and the same terms and conditions of service as are, at the time of such payment or grant, applicable to employees of corresponding rank or status of a comparable banking company or banking co-operative society to be determined for this purpose by the Reserve Bank (whose determination in this respect shall be final);

(ii) the transferee bank shall pay or grant not later than the expiry of the aforesaid period of three years, to the said employees the same remuneration and the same terms and conditions of service as are, at the time of such payment or grant, applicable to the other employees of the corresponding rank or status of the transferee bank subject to the qualifications and experience of the said employees being the same as or equivalent to those of such other employees of the transferee bank:

Provided further that if in any case under clause (ii) of the first proviso any doubt or difference arises as to whether the qualifications and experience of any of the said employees are the same as or equivalent to the qualifications and experience of the other employees of corresponding rank or status of the transferee bank, the doubt or difference shall be referred, before the expiry of a period of three years from the date of the payment or grant mentioned in that clause to the Reserve Bank whose decision thereon shall be final;

(j) notwithstanding anything contained in clause (i) where any of the employees of the banking company or banking co-operative society not being workmen within the meaning of the Industrial Disputes Act, 1947 are specifically mentioned in the scheme under clause (i), or where any employees of the banking company or banking co-operative society have by notice in writing given to the banking company or, banking co-operative society, as the case may be, the transferee bank at any time before the expiry of one month next following the date on which the scheme is sanctioned by the Central Government, intimated their intention of not becoming employees of the banking company or banking co-operative society on its reconstruction or, as the case may be, of the transferee bank, the payment to such employees of compensation, if any, to which they are entitled under the Industrial Disputes Act, 1947, and such pension, gratuity, provident fund and other retirement benefits ordinarily admissible to them under the rules or authorisations of the banking company or banking co-operative society immediately before the date of the order of moratorium;

14 of 1947.

(k) any other terms and conditions for the reconstruction or amalgamation of the banking company or banking co-operative society;

(l) such incidental, consequential and supplemental matters as are necessary to secure that the reconstruction or amalgamation shall be fully and effectively carried out.

(6) (a) A copy of the scheme prepared by the Reserve Bank shall be sent in draft to the banking company or banking co-operative society and also to the transferee

bank and any other banking company or banking co-operative society concerned in the amalgamation, for suggestions and objections, if any, within such period as the Reserve Bank may specify for this purpose;

(b) The Reserve Bank may make such modifications, if any, in the draft scheme, as it may consider necessary, in the light of the suggestions and objections received from the banking company or banking co-operative society and also from the transferee bank, and any other banking company or banking co-operative society concerned in the amalgamation and from any members, depositors or other creditors of each of those companies or co-operative societies and the transferee bank.

(7) The scheme shall thereafter be placed before the Central Government for its sanction and the Central Government may sanction the scheme without any modifications or with such modifications as it may consider necessary, and the scheme as sanctioned by the Central Government shall come into force on such date as the Central Government may specify in this behalf:

Provided that different dates may be specified for different provisions of the scheme.

(8) The sanction accorded by the Central Government under sub-section (7), whether before or after the commencement of section 21 of the Banking Laws (Miscellaneous Provisions) Act, 1963, shall be conclusive evidence that all the requirements of this section relating to reconstruction, or, as the case may be, amalgamation have been complied with and a copy of the sanctioned scheme certified in writing by an officer of the Central Government to be a true copy thereof, shall, in all legal proceedings (whether in appeal or otherwise and whether instituted before or after the commencement of the said section 21), be admitted as evidence to the same extent as the original scheme.

(9) On and from the date of the coming into operation of the scheme or any provision thereof, the scheme or such provision shall be binding on the banking company or banking co-operative society, or, as the case may be, on the transferee bank and any other banking company or banking co-operative society concerned in the amalgamation and also on all the members, depositors and other creditors and employees of each of those companies or societies and of the transferee bank, and on any other person having any right or liability in relation to any of those companies or societies or the transferee bank including the trustees or other persons managing, or connected in any other manner with, any provident fund or other fund maintained by any of those companies or co-operative societies or the transferee bank.

(10) On and from the date of the coming into operation of, or as the case may be, the date specified in this behalf in, the scheme the properties and assets of the banking company or banking co-operative society shall, by virtue of and to the extent provided in the scheme, stand transferred to, and vest in, and the liabilities of the banking company or banking co-operative society shall, by virtue of and to the extent provided in the scheme, stand transferred to, and become the liabilities of, the transferee bank.

(11) If any difficulty arises in giving effect to the provisions of the scheme, the Central Government may by order do anything not inconsistent with such provisions which appears to it necessary or expedient for the purpose of removing the difficulty.

(12) Copies of the scheme or of any order made under sub-section (11) shall be laid before both Houses of Parliament, as soon as may be, after the scheme has been sanctioned by the Central Government, or, as the case may be, the order has been made.

(13) Where the scheme is a scheme for amalgamation of the banking company or banking co-operative society, any business acquired by the transferee bank under the scheme or under any provision thereof shall, after the coming into operation of the

scheme or such provision, be carried on by the transferee bank in accordance with the law governing the transferee bank, subject to such modifications in that law or such exemptions of the transferee bank from the operation of any provisions thereof as the Central Government on the recommendation of the Reserve Bank may, by notification in the Official Gazette, make for the purpose of giving full effect to the scheme:

Provided that no such modification or exemption shall be made so as to have effect for a period of more than seven years from the date of the acquisition of such business.

(14) Nothing in this section shall be deemed to prevent the amalgamation with a banking institution by a single scheme of several banking companies or banking co-operative societies in respect of each of which an order of moratorium has been made under this section.

(15) The provisions of this section and of any scheme made under it shall have effect notwithstanding anything to the contrary contained in any other provisions of this Act or in any other law or any agreement, award or other instrument for the time being in force.

(16) In this section, "banking institution" means any banking company or banking co-operative society and includes the State Bank of India or a subsidiary bank or a corresponding new bank.

Explanation.—References in this section to the terms and conditions of service as applicable to an employee shall not be construed as extending to the rank and status of such employee.

55. In Part IIIB of the principal Act, in the heading, for the words "BANKING COMPANIES", the words "BANKING COMPANIES OR BANKING CO-OPERATIVE SOCIETIES" shall be substituted.

56. In sections 45W, 45Y, 45Z, 45ZA and 45ZB of the principal Act, for the words "banking company;", wherever they occur, the words "banking company or banking co-operative society" shall be substituted.

57. For section 45ZC of the principal Act, the following section shall be substituted, namely:—

"45ZC. (1) Where any person leaves any article in safe custody with a banking company or a banking co-operative society such person may nominate, in the prescribed manner, one person to whom, in the event of the death of the person leaving the article in safe custody, such article may be returned by the banking company or banking co-operative society.

(2) Where the nominee is a minor, it shall be lawful for the person making the nomination to appoint in the prescribed manner any person to receive the articles deposited in the event of his death during the minority of the nominee.

(3) The banking company or banking co-operative society shall, before returning any article under this section to the nominee or the person appointed under subsection (2), prepare, in such manner, as may be directed by the Reserve Bank from time to time, an inventory of the said articles, which shall be signed by such nominee or person and shall deliver a copy of the inventory so prepared to such nominee or person.

(4) Notwithstanding anything contained in any other law for the time being in force or in any disposition, whether testamentary or otherwise, in respect of such articles, where a nomination made in the prescribed manner purports to confer on any person the right to receive the articles from the banking company or the banking co-

Amendment
of heading
below Part
IIIB.

Amendment
of sections
45W, 45Y,
45Z, 45ZA
and 45ZB.

Substitution
of new
section for
section 45ZC.

Nomination
for return of
articles in
safe custody
with banking
company or
banking co-
operative
society.

operative society, the nominee shall on the death of the person leaving the articles in safe custody, become entitled to the return of the articles to the exclusion of all other persons, unless the nomination is varied or cancelled in the prescribed manner:

Provided that nothing contained in this section shall affect the right or claim which any person may have against the person to whom the article is returned in pursuance of this sub-section."

58. In sections 45ZD, 45ZE and 45ZF of the principal Act, for the words, "banking company", wherever they occur, the words "banking company or banking co-operative society" shall be substituted.

Amendment
of sections
45ZD, 45ZE
and 45ZF.

59. In section 46 of the principal Act,—

Amendment
of section 46.

(a) in sub-section (1), for the words "which may extend to three years", the words "not less than one year but which may extend to seven years" shall be substituted;

(b) after sub-section (1), the following sub-section shall be inserted, namely:—

"(1A) Every director, who has voted in favour of the resolution of the Board of directors or committee thereof of the banking company or banking co-operative society, as the case may be, for sanctioning the loan and advance in contravention of sub-section (1) of section 20, shall be punishable with imprisonment for a term which may extend to two years or fine or with both.";

(c) in sub-section (2),—

(i) for the words "banking company", the words "banking company or banking co-operative society" shall be substituted;

(ii) for the words "two thousand rupees", the words "twenty lakh rupees" shall be substituted;

(iii) for the words "one hundred rupees", the words "fifty thousand rupees" shall be substituted;

(d) in sub-section (3), for the words "banking company", at both the places where they occur, the words "banking company or banking co-operative society" shall be substituted;

(e) in sub-section (4),—

(i) for the words "fifty thousand rupees", the words "one crore rupees" shall be substituted;

(ii) for the words "two thousand and five hundred rupees", the words "one lakh rupees" shall be substituted;

(f) in sub-sections (5) and (6), for the word "company" wherever it occurs, the words "company or co-operative society" shall be substituted;

(g) in the *Explanation* below sub-section (6), in clause (a), for the words "includes a firm", the words "includes a co-operative society or firm" shall be substituted.

60. After section 46A of the principal Act, the following section shall be inserted, namely:—

"46B. If any person, who has been convicted of the commission of offence punishable under sub-section (1) of section 46, is subsequently convicted of offence punishable under that sub-section, he shall be punished for the second and every subsequent offence with rigorous imprisonment for a term which shall not be less than one year but which may extend to ten years and shall also be liable to fine."

Insertion of
new section
46B.

Enhancement
of punishment
for certain
offence after
previous
conviction.

Amendment of
section 47A.

61. In section 47A of the principal Act,—

(a) for the words “banking company” wherever they occur, the words “banking company or banking co-operative society” shall be substituted;

(b) in sub-section (1), in clause (b), for the words “five lakh rupees or twice the amount”, the words “five crore rupees or five times the amount” shall be substituted.

Amendment of
section 49A.

62. In section 49A of the principal Act, for the words “banking company”, the words “banking company or banking co-operative society” shall be substituted.

Insertion of
new section
49BA.

63. After section 49B of the principal Act, the following section shall be inserted, namely:—

Change of
name by a
banking co-
operative
society.

“49BA. No banking co-operative society shall, without prejudice to the provisions contained in any other law for the time being in force, shall change its name unless the Reserve Bank certifies in writing that it has no objection to such change.”.

Insertion of
new section
49D.

64. After section 49C of the principal Act, the following section shall be inserted, namely:—

Alteration
of bye-laws
of a banking
co-operative
society.

“49D. No application for the confirmation of the alteration of the bye-laws of a banking co-operative society shall be maintainable before any authority unless the Reserve Bank certifies that there is no objection to such alterations.”.

Substitution of
new section
for section
50.
Certain
claims for
compensation
barred.

65. For section 50 of the principal Act, the following section shall be substituted, namely:—

“50. No person shall have any right, whether in contract or otherwise, to any compensation for any loss incurred by reason of the operation —

(a) of any of the provisions contained in the case of a banking company in sections 10, 12A, 16, 35A, 35B, 36, 43A and 45 or by reason of the compliance by a banking company with any order or directions given to it under this Act;

(b) of any of the provisions contained, in the case of a banking co-operative society, in sections 10, 12A, 16, 35A, 35B, 36 and 45 or by reason of the compliance by a banking co-operative society with any order or directions given to it under this Act.”.

Amendment
of section 51.

66. In section 51 of the principal Act, in sub-section (1),—

(i) in the opening portion,—

(A) for the words, brackets, figures and letters “[excluding sub-section (3)], sub-sections (1B), (1C) and (2) of section 30”, the words, brackets, figures and letters “sub-sections (1B), (1C), (1D), (2), (4) and (5) of section 30” shall be substituted;

(B) for the words “banking companies”, the words “banking companies or banking co-operative societies” shall be substituted;

(ii) in the proviso, in clause (c), for the words “banking company” at both the places where they occur, the words “banking company or banking co-operative society” shall be substituted.

Insertion of
new section
51A.

67. After section 51 of the principal Act, the following section shall be inserted, namely:—

Application
of certain
provisions to
certain
financial
institutions.

“51A.(1) Notwithstanding anything contained in the Companies Act, 1956 or any other enactment,—

(a) the provisions of sections 20, 27, 28, 30, 35, 35A, 35B and 36AA shall also apply, so far as may be, to and in relation to —

(i) the IFCI Ltd., being a company registered under the Companies Act, 1956;

(ii) the Industrial Investment Bank of India Limited, being a company registered under the Companies Act, 1956;

(iii) the Tourism Finance Corporation of India Limited, being a company registered under the Companies Act, 1956;

(iv) the Infrastructure Development Finance Company Limited, being a company registered under the Companies Act, 1956,

as they apply to and in relation to the banking companies;

(b) the provisions of sections 20, 27, 28, sub-sections (1B), (1C), (1D), (4) and (5) of section 30, sections 35 and 35A shall also apply to —

(i) the Small Industries Bank;

(ii) the National Bank;

(iii) the National Housing Bank;

(iv) the Exim Bank,

as they apply to and in relation to the banking companies:

Provided that provisions of sections 18 and 24 shall also apply to the companies referred to in sub-clauses (i) to (iv) of clause (a) or financial institution referred to in sub-clauses (i) to (iv) of clause (b) if such company or financial institution accepts demand deposit from the public.

(2) The Central Government may, in consultation with the Reserve Bank may, by notification in the Official Gazette, direct that any of the provision of this Act, specified in the notifications,—

(a) shall not apply to any company referred to in sub-clause (i) or sub-clause (ii) or sub-clause (iii) or sub-clause (iv) of clause (a) or any financial institution referred to in sub-clause (i) or sub-clause (ii) or sub-clause (iii) or sub-clause (iv) of clause (b) of this section;

(b) shall apply to any company referred to in sub-clause (i) or sub-clause (ii) or sub-clause (iii) or sub-clause (iv) of clause (a) or any financial institution referred to in sub-clause (i) or sub-clause (ii) or sub-clause (iii) or sub-clause (iv) of clause (b) of this section only with such exceptions, modifications and adaptations, as may be specified in the notification.

(3) A copy of every notification proposed to be issued under sub-section (2), shall be laid in draft before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in disapproving the issue of the notification or both Houses agree in making any modification in the notification, the notification shall not be issued or, as the case may be, shall be issued only in such modified form as may be agreed upon by both the Houses.”.

68. Section 53 of the principal Act shall be numbered as sub-section (1) thereof—

(i) in sub-section (1) as so numbered,—

(a) for the words “banking company”, the words “banking company or banking co-operative society” shall be substituted;

Amendment
of section 53.

(b) for the words “banking companies”, the words “banking companies or banking co-operative societies” shall be substituted;

(ii) after sub-section (1) as so numbered, the following sub-section shall be inserted, namely:—

“(2) A copy of every notification proposed to be issued under sub-section (1), shall be laid in draft before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in disapproving the issue of the notification or both Houses agree in making any modification in the notification, the notification shall not be issued or, as the case may be, shall be issued only in such modified form as may be agreed upon by both the Houses.”.

Amendment of section 56. 69. Section 56 of the principal Act shall be renumbered as sub-section (1) thereof and after sub-section (1) as so numbered, the following sub-section shall be inserted, namely:—

“(2) The provisions of this section shall not apply on and after the commencement of the Banking Regulation (Amendment) and Miscellaneous Provisions Act, 2003”.

Consequential amendments. 70. The following consequential amendments shall be made in the principal Act, namely:—

(a) in Part II of the principal Act, in the heading, after the words “BANKING COMPANIES”, the words “AND BANKING CO-OPERATIVE SOCIETIES” shall be inserted;

(b) in the Third Schedule to the principal Act, in Form A, relating to Form of Balance sheet, for the words “banking companies”, the words “banking companies or banking co-operative society” shall be substituted.

Amendment to certain enactments. 71. The enactments specified in the Schedule to this Act shall be amended in the manner provided therein.

THE SCHEDULE

(See section 71)

AMENDMENTS TO CERTAIN ENACTMENTS

PART I

AMENDMENT TO THE STATE FINANCIAL CORPORATIONS ACT, 1951

(63 of 1951)

Section 7, in sub-section (3), omit “and the Banking Regulation Act, 1949”.

PART II

AMENDMENT TO THE STATE BANK OF INDIA ACT, 1955

(23 of 1955)

Section 12, omit “and the Banking Regulation Act, 1949”.

PART III

AMENDMENT TO THE COMPANIES ACT, 1956

(1 OF 1956)

Section 87, in sub-section (2), insert the following:—

10 of 1949.

“Provided that in the case of a banking company referred to in clause (c) of section 5 of the Banking Regulation Act, 1949, nothing contained in clause (b) of this sub-section shall entitle the holder of any preference share to exercise his voting rights in proportion to the capital paid up in respect of preference shares which bears to the total paid up equity capital of such company.”

PART IV

AMENDMENT TO THE STATE BANK OF INDIA (SUBSIDIARY BANKS) ACT, 1959

(38 OF 1959)

Section 20, omit “, and the Banking Companies Act, 1949”.

PART V

AMENDMENT TO THE WAREHOUSING CORPORATIONS ACT, 1962

(58 OF 1962)

Section 5, in sub-section (2), omit “and the Banking Companies Act, 1949”.

PART VI

AMENDMENT TO THE REGIONAL RURAL BANKS ACT, 1976

(21 OF 1976)

Section 7, omit “, and shall also be deemed to be approved securities for the purposes of the Banking Regulation Act, 1949”.

PART VII

AMENDMENT TO THE INDUSTRIAL FINANCE CORPORATION (TRANSFER OF UNDERTAKING AND REPEAL) ACT, 1993

(23 OF 1993)

Section 10, for “the Indian Trusts Act, 1882, the Insurance Act, 1938 and the Banking Regulation Act, 1949”, substitute “the Indian Trusts Act, 1882 and the Insurance Act, 1938”.

PART VIII

AMENDMENT TO THE INDUSTRIAL RECONSTRUCTION BANK (TRANSFER OF UNDERTAKING AND REPEAL) ACT, 1997

(7 OF 1997)

Section 11, for “the Indian Trusts Act, 1882, the Insurance Act, 1938 and the Banking Regulation Act, 1949”, substitute “the Indian Trusts Act, 1882 and the Insurance Act, 1938”.

PART IX

AMENDMENT TO THE UNIT TRUST OF INDIA (TRANSFER OF UNDERTAKING AND REPEAL) ACT, 2002

(58 OF 2002)

Section 17, for “the Indian Trusts Act, 1882, the Insurance Act, 1938 and the Banking Regulation Act, 1949”, substitute “the Indian Trusts Act, 1882 and the Insurance Act, 1938”.

STATEMENT OF OBJECTS AND REASONS

The Banking Regulation Act, 1949 has been in force for more than four decades and empowers the Reserve Bank of India (hereinafter referred to as the RBI) to regulate and supervise banking companies, public sector banks and co-operative banks. While the banks have started operating in deregulated and liberalised environment, regulation of co-operative banks continues to be given a separate treatment by restricting the applicability of the provisions of the Banking Regulation Act, 1949. The need for strengthening the financials of the co-operative banking sector and to bring it on par with banking companies has been felt for long and has also been emphasised by the Joint Parliamentary Committee. The proposed legislation therefore seeks to freeze the provisions contained in section 56 of the Act which apply to only co-operative banks and amend certain other provisions of the Act to bring banking co-operative societies on par with banking companies in the matter of regulation and supervision by the RBI. The proposed legislation provides for revised capital base for banking co-operative societies and also requires that co-operative credit societies with a capital based of less than rupees one lakh at present operating as banks shall cease to do banking business within three years from the date of commencement of the proposed legislation.

2. The proposed legislation aims to strengthen regulatory powers of the RBI and to extend the provisions of the Act to certain financial institutions. The provisions in the Bill, *inter alia*, provide for—

(a) enhancing the minimum capital level for banking co-operative societies at rupees twenty-five lakhs, banking companies at rupees one hundred crores and local area banks at rupees five crores and foreign banks at rupees one hundred crores;

(b) prohibiting the use of the word “banker” in addition to “bank” and “banking” and increase the punishment for violation of such provision to five years imprisonment;

(c) empowering the RBI to remove the chairman of the Board of directors of any banking co-operative society if in its opinion he is not a fit and proper person to hold the office of chairman;

(d) permitting banking companies to issue irredeemable preference shares or redeemable preference shares as per the international practice;

(e) empowering the RBI to provide for restriction on acquisition of five per cent. or more of shares of a banking company and make such acquisition subject to its approval;

(f) prohibiting a director of a corresponding new bank or State Bank of India and its subsidiary or banking co-operative society, on the Board of a banking company;

(g) prohibiting connected lending, *i.e.*, lending to related persons and associate companies by the banking companies or banking co-operative societies;

(h) providing for licensing provisions for the banking co-operative societies after introduction of revised capital base;

(i) empowering the RBI to use discretion in prescribing the Statutory Liquidity Ratio;

(j) providing for a Depositor Protection Fund to be set up by crediting deposits remaining unclaimed for more than ten years and the Fund to be used for promotion and protection of depositors' interest;

(k) making a provision for balance sheets of banking companies or banking co-operative societies to include certain particulars as to their subsidiaries;

(l) empowering the RBI to supersede the Board of a banking company or banking co-operative society;

(m) making provisions for facilitating amalgamation of banking companies with the State Bank of India or a subsidiary bank or a corresponding new bank and a non-banking finance company with any banking company;

(n) making certain provisions in the Banking Regulation Act, 1949 to be made applicable to specified financial institutions to facilitate regulation by the RBI;

(o) amending the definition of "approved securities" by restricting such securities to those guaranteed by the Central or State Governments. Consequently, the deemed status of approved securities extended to shares and securities of the State Bank of India and its subsidiaries, the State Financial Corporations, the Warehousing Corporations and the Regional Rural Banks is proposed to be withdrawn.

3. It is also proposed to amend various provisions of the Banking Regulation Act, 1949 for substituting the words "banking company or banking co-operative society" for the words "banking company" and to make necessary consequential amendments in certain enactments specified in the Schedule to the Bill.

4. The Bill seeks to achieve the above objects.

NEW DELHI;
The 5th August, 2003

JASWANT SINGH.

Notes on clauses

Clause 2.—This clause seeks to amend section 3 of the Banking Regulation Act, 1949 which provides that the provisions of that Act shall not apply to primary agricultural credit societies, co-operative land mortgage bank and any other co-operative societies not covered by section 56 of said Act.

It is proposed to amend aforesaid section 3 so as to provide that the provisions of aforesaid Act shall not apply to primary agricultural credit societies, co-operative land mortgage bank and any other co-operative societies not covered by section 56 before the Banking Regulation (Amendment) and Miscellaneous Provisions Act, 2003. After the proposed legislation, the provisions of the aforesaid Act shall apply to primary agricultural credit societies, co-operative land mortgage bank and any other co-operative societies not covered by section 56 if they carry on the business of the banking.

Clause 3.—This clause seeks to amend section 4 of the Act which confers powers upon the Central Government to suspend the operation of that Act for such period not exceeding sixty days in relation to any specified banking company.

It is proposed to extend the scope of this section so as to include therein the banking co-operative societies also.

Clause 4.—This clause seeks to amend section 5 of the Banking Regulation Act, 1949 which relates to interpretation of various expressions used in that Act.

It is proposed to define and amend the expressions “approved securities”, “banking policy”, “banking co-operative societies”, “central co-operative bank”, “co-operative society”, “primary co-operative banks”, “local area banks”, “managing director”, “small-scale industrial concern”, “substantial interest” and “state co-operative bank” used in the proposed amendments to be made in the Banking Regulation Act, 1949.

Clause 5.—This clause seeks to amend section 5A of the Banking Regulation Act, 1949 which, *inter alia*, provides that the provision of that Act shall have effect notwithstanding anything to the contrary contained in memorandum and article, of a banking company or in any agreement executed by it or in any resolution passed by the banking company in general meeting or by its Board of directors.

It is proposed to extend the provisions contained in section 5A to banking co-operative societies also.

Clause 6.—This clause seeks to substitute a new section for section 6 of the Banking Regulation Act, 1949 relating to forms of business in which banking companies may engage.

The provisions contained in the existing section 6 allow a banking company to carry on certain other business specified in that section or the business specified in the notifications issued by the Central Government from time to time, in addition to the banking business.

It is proposed to amend the aforesaid section 6 so as to include certain other business which a banking company may undertake. This additional business proposed to be included in the aforesaid section relate to leasing equipment, hire purchase, factoring, insurance, sponsoring of mutual funds, acting as a trustee in mutual funds, dealing in credit cards, debit cards, smart cards, derivatives and securitisation.

It is also proposed to enable a banking company to form a company to carry on any of the business prescribed in this section.

The clause further proposes to extend the provisions of the aforesaid section 6 in relation to the banking co-operative societies also to enable them to carry on the business specified in that section.

Clause 7.—This clause seeks to amend section 7 of the Banking Regulation Act, 1949 relating to use of words “bank”, “banker”, “banking” or “banking company” by any company.

The existing provisions contained in section 7, makes it obligatory for a company carrying on banking business to use the word "bank", "banker", "banking" as part of its name. It prohibits any individual or group of individuals or firm from using such words (except the word "banker") as part of its name or in connection with its business.

It is proposed to substitute a new sub-section (1A) in that sub-section so as to provide that no co-operative society, other than a banking co-operative society, shall use as part of its name or in connection with the business any of the words "bank", "banker", or "banking", and no co-operative society shall carry on the business of banking in India unless it uses as part of its name at least one of such words. However any co-operative society other than a banking co-operative society, which uses on the date of commencement of the Banking Regulation (Amendment) and Miscellaneous Provisions Act, 2003, as part of its name or in connection with its business, any of the words "bank", "banker" or "banking", it shall, within a period of six months from the date of such commencement, omit such words in its name and in connection with its business.

The existing provision contained in sub-section (3) of the aforesaid section 7 provides that the provisions of that section shall not apply to a subsidiary of a banking company for one or more of the purposes mentioned in sub-section (1) of section 19 or any association of banks formed for the protection of the mutual interest and registered under section 25 of the Companies Act, 1956.

It is proposed to amend said sub-section (3) so as to provide that the provisions of aforesaid section 7 shall not apply to any co-operative society, formed by the employees of a banking company or a banking co-operative society or the State Bank of India or subsidiary bank or a corresponding new bank or a subsidiary of such banking company or banking co-operative society or State Bank of India or a subsidiary bank or a corresponding new bank; or a co-operative land mortgage bank insofar as the words "bank", "banker" or "banking" appears as part of the name of the employer bank, or as the case may be, of the bank, whose subsidiary the employer bank is; or to a co-operative land mortgage bank. It is further proposed to make other amendments so as to include the banking co-operative society within the scope of sub-section (3) which is of consequential in nature.

It is, proposed to insert new sub-section (4) in aforesaid section 7 to provide for the punishment for violation of the provisions of that section. The provisions contained in new sub-section (4) provide that if a default is made in complying with the provisions of sub-section (1) or sub-section (1A) or sub-section (2), any person who is in default shall be punishable with imprisonment for a term which may extend to five years or with fine or with both.

Clause 8.—This clause seeks to amend section 8 of the Banking Regulation Act, 1949 relating to prohibition of trading by a banking company. It is proposed to extend the provisions of this section to banking co-operative societies also.

Clause 9.—This clause seeks to omit section 9 of the Banking Regulation Act, 1949 relating to disposal of non-banking assets. The existing provisions contained in the said section prohibit a banking company from holding non-banking assets for a period more than seven years and it may hold non-banking assets for further period of five years with the permission of the Reserve Bank of India.

Clause 10.—This clause seeks to substitute a new section for section 10 of the Banking Regulation Act, 1949 relating to prohibition of employment of managing agents and restrictions on certain forms of employment.

The provisions contained in the existing section 10 provide that no banking company shall be managed by a managing agent and certain undesirable persons or by any person who is a director of any other company not being a subsidiary of a banking company or a company registered under section 25 of the Companies Act, 1956.

It is proposed to extend the provisions of the aforesaid section to the banking co-operative societies. It is further proposed to omit the reference of managing agents in view of abolition of managing agency.

Clause 11.—This clause seeks to amend section 10A of the Banking Regulation Act, 1949 which provides for inclusion of persons with professional or other experience in the Board of directors.

Under the existing provisions contained in the said section 10A, not less than fifty-one per cent. of the total number of members of the Board of directors of a banking company shall possess special knowledge or practical experience in certain areas like accountancy, agriculture, banking, co-operation, etc.

It is proposed to include science and technology also in such areas.

It is further proposed that at least two directors should have a special knowledge or practical experience in accountancy, banking or finance.

It is also proposed to prohibit a stock broker or a stock sub-broker from being a director on the Board of a banking company.

Under the existing provisions contained in sub-section (2A) of the aforesaid section 10A, no director of a banking company other than its chairman or whole-time director, by whatever name called can hold office continuously for a period exceeding eight years. It is also proposed to reduce the said period from eight years to six years.

It is also proposed to extend the provisions of the aforesaid section 10A to banking co-operative societies also.

Clause 12.—This clause seeks to substitute a new section for section 10B of the Banking Regulation Act, 1949 which requires banking company to be managed by a whole-time chairman.

The provisions contained in the existing section 10B provide for appointment of whole-time chairman or managing director (in case a chairman is a part-time chairman) and his qualifications for being appointed as such, removal of a chairman or managing director who is not fit and proper person to hold such post, filling up the temporary vacancy in the post of a chairman or the managing director due to death or resignation or infirmity. The temporary vacancy is required to be filled within a period of four months.

It is proposed to extend the provisions of the aforesaid section 10B to banking co-operative societies and increase the said period from four months to twelve months, and omit transitory provisions which have become redundant.

Clause 13.—This clause seeks to substitute a new section for section 10BB relating to powers of Reserve Bank of India to appoint chairman of a banking company.

It is proposed to extend the provisions contained in existing section 10BB of the said Act to banking co-operative societies also.

Clause 14.—This clause seeks to substitute a new section for section 10C of the Banking Regulation Act, 1949 which requires that a chairman and certain directors may not be required to hold qualification shares in a banking company.

It is proposed to extend the provisions of the existing section 10C to the banking co-operative societies also and to provide that the whole-time chairman or managing director of a banking co-operative society, if appointed, by the Reserve Bank of India shall not be required to be a member of such co-operative society.

Clause 15.—This clause seeks to amend section 10D of the Banking Regulation Act, 1949 which gives an overriding effect to sections 10A and 10B of that Act over all other laws, contracts, etc.

It is proposed to make these provisions applicable to banking co-operative societies also.

Clause 16.—This clause seeks to substitute a new section for section 11 of the Banking Regulation Act, 1949 deals with the requirement as to minimum paid-up capital and reserves of a banking company.

The provisions contained in existing section 11 specify minimum paid-up capital and reserves for a banking company varying from rupees fifty thousand to twenty lakhs depending on the location where the banks are registered and functioning.

It is proposed to enhance the minimum paid-up capital and reserves (a) in the case of a banking company incorporated in India to one hundred crore rupees, (b) in the case of local area bank to five crore rupees and (c) in the case of foreign banks to one hundred crore rupees.

It is further proposed to provide that in the case of banking co-operative societies, the minimum capital and reserves shall be twenty-five lakh rupees.

It is also proposed to empower the Reserve Bank of India, subject to the statutory minimum capital, to raise the paid-up capital and reserve as it may consider necessary from time to time. The provisions of this section shall apply to banking co-operative societies also.

Clause 17.—This clause seeks to amend section 12 of the Banking Regulation Act, 1949 which provides for regulation of paid-up capital, subscribed capital and authorised capital and voting rights of share holders.

The existing provisions contained in said section 12 provide for proportion of paid-up capital to subscribed capital and subscribed capital to authorised capital. It also provides that the capital of the banking company shall consist of ordinary shares only.

It is proposed to amend the aforesaid section to provide that the capital of the banking company shall consist of ordinary or equity shares, and irredeemable preference shares or preference shares redeemable after such period as the banking company may decide. However the Reserve Bank of India may specify the extent to which a banking company may issue preference shares of either description.

It is further proposed that to provide that the holders of the preference shares issued by any banking company shall not be entitled to exercise voting right as specified in the proviso to clause (b) of sub-section (2) of section 87 of the Companies Act, 1956. This provision is applicable to banking companies only.

Clause 18.—This clause seeks to amend section 12A of the Banking Regulation Act, 1949 relating to election of new directors.

The present provisions contained in said section 12A provide that the Reserve Bank of India may require a banking company to elect new directors in accordance with the voting rights permissible under that Act.

It is proposed to make these provisions applicable to banking co-operative societies also with reference to the law applicable to them.

Clause 19.—This clause seeks to insert new sections 12B, 12C and 12D in the Banking Regulation Act, 1949 relating to restriction on acquisition of certain shares, restriction on transfer of shares and time within which the refusal of transfer of share to be communicated.

The proposed new section 12B relates to restriction on acquisition of certain shares of a banking company.

Sub-section (1) of the proposed new section 12B provides that no individual, firm, group, constituent of a group, body corporate or bodies corporate, except with the

previous approval of the Reserve Bank of India, shall jointly or severally acquire or agree to acquire, whether in his or its own name or in the name of any other person, any shares in a banking company, if the total nominal value of the shares intended to be so acquired exceeds, or would, together with the total nominal value of any shares already held in the banking company exceed five per cent. of the paid-up share capital of such company.

Sub-section (2) of the proposed new section 12B provides that where any individual, firm, group, constituent of a group, body corporate or bodies corporate (referred hereafter as the acquirer), is prohibited, by sub-section (1), from acquiring or agreeing to acquire except with the previous approval of the Reserve Bank of India, any shares of a banking company, no such banking company shall transfer any share to such acquirer unless such acquirer has obtained the previous approval of the Reserve Bank of India for the acquisition or agreement for the acquisition of such shares.

The proposed new section 12C relates to restriction on transfer of shares.

Sub-section (1) of the proposed new section 12C provides that every individual, firm, group, constituent of a group, body corporate, bodies corporate, holding, whether singly or in the aggregate five per cent. or more of the nominal value of the paid-up share capital of banking company shall, before transferring one or more than such shares, give to the Reserve Bank of India an intimation of its or their proposal to transfer to such shares and every such intimation shall include a statement as to the particulars of the shares proposed to be transferred, the name and address of the person to whom the shares are proposed to be transferred, and share holding, if any, of the proposed transferee, in the banking company and such other particulars as may be prescribed.

Sub-section (2) of the proposed new section 12C provides that where, on receipt of an intimation given under sub-section (1) or otherwise, the Reserve Bank of India is satisfied that as a result of such transfer, a change in the composition of the Board of directors of the banking company is likely to take place and that such change would be prejudicial to the interests of the banking company or to the public interest, it may, by order, direct that no such shares shall be transferred to the proposed transferee and the Reserve Bank of India may direct the banking company not to give effect to the transfer of such share and where the transfer of such shares has already been registered, the Reserve Bank of India may direct the banking company not to permit the transferee or any nominee or proxy of the transferee to exercise any voting or other rights attaching to such shares.

Sub-section (3) of the proposed new section 12C provides that where any direction is given by the Reserve Bank of India under sub-section (2), the shares referred to therein shall stand re-transferred to the person from whom such shares were acquired.

Sub-section (4) of the proposed new section 12C provides that the person to whom any shares stand re-transferred under sub-section (3) shall be eligible to exercise voting or other rights attaching to such shares.

The proposed new section 12D provides the time limit within which the refusal for transfer of shares shall be communicated. It provides that every request made to the Reserve Bank of India for according its approval to the proposal for the acquisition of any shares referred to in section 12B or the transfer of any shares referred to in section 12C shall be presumed to have been granted unless, within a period of sixty days from the date of receipt of such request, the Reserve Bank of India communicates to the person by whom the request was made, that the approval prayed for cannot be granted.

Clause 20.—This clause seeks to omit section 13 of the Banking Regulation Act, 1949 relating to restriction of commission, brokerage, discount, etc., on sale of

shares by a banking company. After the proposed omission, the existing provisions of the said section 13 which restrict the payment of commission to two and a half per cent. of the paid-up value of shares shall not be applicable. The provisions of the Companies Act, 1956 relating to brokerage on sale of shares shall be applicable and banks may pay brokerage on sale of shares as permissible under section 76 of the Companies Act, 1956.

Clause 21.—This clause seeks to substitute a new section for section 14 of the Banking Regulation Act, 1949 relating to prohibition of creation of charge on its unpaid capital by a banking company.

It is proposed to make these provisions applicable to banking co-operative societies also.

Clause 22.—This clause seeks to amend section 14A of the Banking Regulation Act, 1949 which restricts creation of floating charge on its assets by a banking company.

The existing provisions provide that no banking company can create a floating charge on its assets unless it is certified by Reserve Bank of India that the creation of a charge is not detrimental to the interest of the depositors of the banking company.

It is proposed to make these provisions applicable to banking co-operative societies also.

Clause 23.—This clause seeks to amend section 15 of the Banking Regulation Act, 1949 which provides for restriction on the payment of dividend by a banking company on its shares.

The existing provisions provide that no banking company shall pay dividend on its shares unless all its capitalized expenses have been completely written off.

It is proposed to make these provisions applicable to banking co-operative societies also.

Clause 24.—This clause seeks to substitute a new section for section 16 of the Banking Regulation Act, 1949 relating to prohibition of common directors in a banking company.

The existing provisions contained in the said section 16 provide that no banking company shall have a director who is also a director of another banking company.

It is proposed to provide that a director of a public sector bank or a banking co-operative society should also be prohibited from becoming a director on the board of a banking company.

It is also proposed to apply these provisions relating to prohibition of common directors to banking co-operative societies also. However, the prohibition shall not apply in respect of a director of a primary co-operative bank on the board of central co-operative bank or State co-operative bank and also to a director of a central co-operative bank on the board of State co-operative bank, to which they are affiliated and also to a director appointed by the Reserve Bank of India, or in a case where previous approval of Reserve Bank of India has been obtained for appointment of such director.

Clause 25.—This clause seeks to amend section 17 of the Banking Regulation Act, 1949 relating to reserve fund.

The existing provisions contained in the said section 17 provides that every banking company incorporated in India shall transfer every year twenty per cent. of its profit to the reserve fund.

It is proposed to make this provision applicable to banking co-operative societies also.

Clause 26.—This clause seeks to amend section 18 of the Banking Regulation Act, 1949 relating to cash reserve.

The present provisions contained in the said section 18 provide that every non-scheduled bank shall maintain cash reserve of an amount which shall be equivalent to at least three per cent. of the total of its demand and time liabilities in India.

It is proposed to remove the ceiling on the cash reserve. It is further proposed to make these provisions applicable to banking co-operative societies also.

Clause 27.—This clause seeks to substitute new sections for sections 19 and 20 of the Banking Regulation Act, 1949 relating to nature of subsidiary companies and restrictions on loans and advances by the banking companies.

The existing provisions contained in section 19 of the Banking Regulation Act, 1949 provide that a banking company may form a subsidiary company for the purpose of undertaking any business prescribed in section 6 of the Act. However, for undertaking any banking business outside India or any business other than those specified in section 6, a banking company has to obtain a previous approval of the Reserve Bank of India for carrying on banking business outside India and also approval of the Central Government for carrying on business other than those prescribed in section 6.

It is proposed to make it obligatory for a banking company to obtain previous permission of the Reserve Bank of India for forming a subsidiary for carrying out any of the above businesses including those business mentioned in section 6.

The existing section 19 also provides for holding of shares by a banking company in any company as a pledgee or mortgagee or the absolute owner subject to the condition that the total holding should not exceed thirty per cent. of its paid-up capital and reserves or thirty per cent. of the paid-up capital of the company, whichever is less.

It is proposed to apply these provisions of the section 19 to banking co-operative societies. However the provisions of section 19 shall not apply to (i) shares acquired by a banking co-operative society in a co-operative society through funds provided by the State Government for that purpose; (ii) in the case of a central co-operative bank, the holding of shares in the state co-operative bank to which it is affiliated; (iii) in the case of a primary co-operative bank, the holding of shares in the central co-operative bank to which it is affiliated or in the State co-operative bank of the State in which it is registered: However no banking co-operative society shall hold any shares in any company or any other co-operative society except with the prior approval of the Reserve Bank of India.

The existing provisions contained in section 20 of the Banking Regulation Act, 1949 provide that no banking company shall grant any loans or advances to any of its directors or any firm or company in which he is interested as a director, managing agent, manager, employee or guarantor.

It is proposed to extend this prohibition to any relatives of a director or to connected companies (being the companies under the same management as that of the banking company, joint venture, its associate or its holding company).

It is also proposed to provide that where any loan or advance or any part thereof has been granted by a banking company or banking co-operative society to any person prior to his becoming a director of such banking company or banking co-operative society or to a party as referred to in clause (b) of sub-section (1) of aforesaid section 20, and there is a default in repayment of such loans or advances and such default continues for a period of six months, such director shall cease to be a director of that banking company or banking co-operative society, as the case may be, and shall not be eligible to be appointed as a director of any banking company or banking co-operative society for a period of five years.

It is proposed that the provisions of section 20 shall apply to banking co-operative societies also.

Clause 28.—This clause seeks to amend section 20A of the Banking Regulation Act, 1949 relating to restrictions on power to remit debts.

The existing provisions contained in the said section 20A provide that a banking company shall not, except with the approval of the Reserve Bank of India, remit any debt due to it by any of its directors or a firm or company in which he is interested as director, partner, managing agent or guarantor.

It is proposed to amend the aforesaid section to provide that the prohibition contained in that section shall also be applicable to banking companies in respect of any of its past or present directors, based on the lines of provisions of section 56 of the Banking Regulation Act, 1949.

It is proposed to extend the provisions of the aforesaid section 20A to banking co-operative societies also.

Clause 29.—This clause seeks to substitute a new section for section 21 of the Banking Regulation Act, 1949 regarding the power of Reserve Bank of India to control advances by banking companies.

The existing provisions contained in said section 21 empower the Reserve Bank of India to determine, in the public interest or depositors interest or in the interest of banking policy, the policy in relation to advances to be followed by banking companies generally or any banking company in particular.

It is proposed to extend the provisions of the aforesaid section 21 to banking co-operative societies also.

Clause 30.—This clause seeks to amend section 21 A of the Banking Regulation Act, 1949 which provides that the rate of interest charged by banking companies is not subject to scrutiny by courts.

It is proposed to apply the provisions contained in the said section to the banking co-operative societies also.

Clause 31.—This clause seeks to substitute a new section for section 22 of the Banking Regulation Act, 1949 relating to licensing of banking companies.

The existing provisions contained in the said section 22, *inter alia*, provide that no company shall carry on banking business in India unless it holds a licence issued in that behalf by the Reserve Bank of India.

It is proposed to make the provisions contained in the aforesaid section 22 applicable to banking co-operative societies and *inter alia*, provide that (i) a co-operative credit society which is carrying on banking business either wholly or along with some other business on the date of the commencement of the proposed legislation, may continue to carry on its banking business for a period of not exceeding three years and thereafter it shall cease to carry on banking business; (ii) every banking co-operative society not having the licence from the Reserve Bank of India, on the date of the commencement of the proposed legislation, shall apply in writing to the Reserve Bank of India for a licence before the expiry of six months from the commencement of the proposed amendments and it may carry on the business of banking until it is granted a licence or is by notice in writing informed by the Reserve Bank of India that licence cannot be granted to it.

However the Reserve Bank of India shall not issue such notice before the expiry of period of three years referred to in sub-section (6) of section 11 or of such further period as Reserve Bank of India may think fit to allow; (iii) banking co-operative society

which has come into existence as a result of division of any banking co-operative society, may continue to carry on banking business until it is informed in writing by the Reserve Bank of India that licence cannot be granted to it.

The existing provisions contained in section 22, *inter alia*, provide for granting of licence to a banking company incorporated outside India subject to certain conditions specified in that section.

It is proposed to add certain more conditions such as empowering the Reserve Bank of India to call for returns and information from the parent banking company (in a foreign country) or to inspect its books of account and documents to satisfy that the foreign bank proposed to be set up in India is financially sound and complies with the requirements laid down in the Act.

It is further proposed to provide that the Reserve Bank of India should be satisfied with the nature and scope of supervision exercised by supervisory authority of the country in which the foreign bank is incorporated and also the prudent management and overall financial soundness of such foreign banking company.

It is also proposed to make a new provision in the proposed sub-section (6) that the Central Government may, in the interest of security of the State or friendly relations with foreign states or in the public interest, direct the Reserve Bank of India not to grant the licence to or cancel the licence of a foreign bank, if already granted.

It is also proposed to empower the Reserve Bank of India to cancel the licence of a banking company if it fails to comply with the Reserve Bank of India directions on prudent norms and also of a foreign bank when directed by the Central Government.

It is also proposed that the provisions contained in section 22 shall apply to the banking co-operative societies also on the lines of the provisions contained in section 56 of the aforesaid Act.

Clause 32.—This clause seeks to amend section 23 of the Banking Regulation Act, 1949 which places restriction for opening of new, and transfer of existing place of, business. The existing provisions contained in the said section 23 provide that no banking company shall open a new place of business in India or change otherwise than within the same city, town, village, the location of the existing place of business situated in India. It also provides that no banking company incorporated in India shall open a new place of business outside India or similarly change the location of the existing branch outside India without the approval of the Reserve Bank of India.

It is proposed that the Reserve Bank of India may be empowered to grant licence having regard to banking policy or the public interest.

It is further proposed to apply the provisions of section 23 to banking co-operative societies also.

Clause 33.—This clause seeks to amend section 24 of the Banking Regulation Act, 1949 which requires maintenance of certain percentage of assets.

The existing provisions contained in section 24 provide that every banking company shall maintain in India in cash or gold valued at price not exceeding the market price or an unencumbered approved securities valued at the price mentioned therein or as may be specified by the Reserve Bank of India an amount which shall not at the close of business on any day be less than twenty five per cent. or such other per cent. not exceeding forty per cent. as the Reserve Bank of India may from time to time specify of its demand and time liabilities in India.

It is proposed to omit the limits of twenty-five per cent. and forty per cent. in respect of statutory liquid assets.

It is also proposed to empower the Reserve Bank of India to specify by notification, in the Official Gazette, to banks to maintain such assets at such percentage of its total demand and time liabilities as may be specified by it from time to time. It is also proposed to provide that the manner of maintaining the assets shall also be specified by the Reserve Bank of India. It is also proposed to empower the Reserve Bank of India to specify the statutory liquidity ratio at any level deemed fit by it.

It is also proposed to omit sub-sections (1) and (2) which have become redundant and also apply the provisions contained in aforesaid section 24 to the banking co-operative societies also.

Clause 34.—This clause seeks to amend section 25 of the Banking Regulation Act, 1949 relating to assets of a banking company in India.

The existing provisions contained in the said section 25 provide that every banking company shall maintain assets in India which shall not be less than seventy-five per cent. of its demand and time liabilities in India.

It is proposed to make this section applicable to banking co-operative societies also.

Clause 35.—This clause seeks to substitute two new sections for section 26 of the Banking Regulation Act, 1949 which requires filing of return of unclaimed deposits by the banking companies.

The proposed new section 26 provides that every banking company or banking co-operative society shall, within thirty days after the expiry of a period of twelve months ending with such date as the Reserve Bank may, by notification in the Official Gazette, specify in this behalf submit a return in the prescribed form and manner to the Reserve Bank at the end of such specified year of all accounts in India which have not been operated for ten years. However in the case of money deposited for a fixed period the said term of ten years shall be reckoned from the date of expiry of such fixed period:

Provided further that every regional rural bank and banking co-operative society other than a primary co-operative bank shall also furnish a copy of the said return to the national bank.

It is also proposed to insert a new section 26A in the Banking Regulation Act, 1949 relating to establishment of Depositor Protection Fund.

Sub-section (1) of the proposed new section 26A provides that the Reserve Bank shall establish a fund to be called the Depositor Protection Fund (referred hereafter to as the Fund).

Sub-section (2) of the proposed new section 26A provides that there shall be credited to the Fund the amount to the credit of any account in India with a banking company or banking co-operative society which has not been operated upon for a period ten years or any deposit remaining unclaimed for more than ten years, shall, within three months from the expiry of the said period of ten years. However nothing contained in the sub-section shall prevent a depositor to claim his deposit from the banking company or banking co-operative society after the expiry of said period of ten years and such company or society shall be liable to repay his deposit.

Sub-section (3) of the proposed new section 26A provides that where the banking company or banking co-operative society has paid outstanding amount from the account or deposit referred to in sub-section (2) above, or allowed operation of such account or deposit, such banking company or banking co-operative society may apply for refund of such amount in such manner as may be specified by the Fund. Sub-section (4) of the proposed new section 26A provides that the Fund shall be utilised for promotion of depositors interests and for such other purposes as may be prescribed.

Sub-section (5) of the proposed new section 26A provides that the Reserve Bank shall, by notification in the Official Gazette, specify an authority or committee, with such members as the Reserve Bank may appoint, to administer the Fund, and maintain separate accounts and other relevant records in relation to the Fund in such forms as may be prescribed.

Sub-section (6) of the proposed new section 26A provides that it shall be competent for the authority or committee appointed under sub-section (5) to spend moneys out of the Fund for carrying out the objects for which the Fund has been established.

Clause 36.—This clause seeks to amend section 27 of the Banking Regulation Act, 1949 relating to monthly returns to be filed by every banking company and power of Reserve Bank of India to call for other returns and information.

It is proposed to amend the said section so as to make it applicable to banking co-operative societies also.

Clause 37.—This clause seeks to amend section 29 of the Banking Regulation Act, 1949 which deals with the accounts and balance-sheet.

The existing provisions contained in the said section provides for the preparation of balance-sheet and profit and loss account by the banking company in the forms as set out in the Third Schedule as near thereto as the circumstances admit.

It is proposed to amend the aforesaid section so as to make it applicable to banking co-operative societies also.

Clause 38.—This clause seeks to insert a new section 29A in the Banking Regulation Act, 1949 requiring a banking company or banking co-operative society to include certain particulars relating to its subsidiaries in its balance-sheet.

Sub-section (1) of the proposed new section requires that there shall be attached to the balance-sheet of a banking company or banking co-operative society having a subsidiary or subsidiaries at the end of the financial year as at which the balance-sheet of a company or co-operative society is made out, the documents specified in that sub-section in respect of such subsidiary or of each such subsidiary, as the case may be.

Sub-section (2) of the proposed new section 29A requires that the balance-sheet referred to in clause (a) of sub-section (1) shall be made out in accordance with the requirements of this Act, or any other law for the time being in force (i) as at the end of the financial year of the subsidiary, where such financial year coincides with the financial year of the banking company or banking co-operative society; (ii) as at the end of the financial year of the subsidiary last before that of the banking company or banking co-operative society where the financial year of the subsidiary does not coincide with that of the banking company or banking co-operative society.

Sub-section (3) of the proposed new section 29A requires that the statement referred to in clause (e) of sub-section (1) shall specify (a) the extent of the banking company's or banking co-operative society's interest in the subsidiary at the end of the financial year or of the last of the financial years of the subsidiary referred to in sub-section (2); (b) the net aggregate amount, so far as it concerns shareholders of the banking company or banking co-operative society and is not dealt with in the banking company's or banking co-operative society's accounts, of the subsidiary's profit after deducting its losses or *vice versa*—(i) for the financial year or years of the subsidiary aforesaid; and (ii) for the previous financial years of the subsidiary since it became the banking company's or banking co-operative society's subsidiary; (c) the net aggregate amount of the profits of the subsidiary after deducting its losses or *vice versa*—(i) for the financial year or years of the subsidiary aforesaid; and (ii) for the previous financial years of the subsidiary since it became the banking company's or banking co-operative

society's subsidiary; so far as those profits are dealt with, or provision is made for those losses, in the banking company's or banking co-operative society's accounts.

Sub section (4) of the proposed new section 29A requires that the clauses (b) and (c) of sub-section (3) shall apply only to profits and losses of the subsidiary which may properly be treated in the banking company's or banking co-operative society's accounts as revenue profits or losses, and the profits or losses attributable to any shares in a subsidiary for the time being held by the banking company or banking co-operative society or any other of its subsidiaries shall not (for that or any other purpose) be treated as aforesaid so far as they are profits or losses for the period before the date on or as from which the shares were acquired by the banking company or banking co-operative society or any of its subsidiaries and for the purpose of determining whether any profits or losses are to be treated as profits or losses for the said period, the profit or loss for any financial year of the subsidiary may, if it is not practicable to apportion it with reasonable accuracy by reference to the facts, be treated as accruing from day to day during that year and be apportioned accordingly.

Sub-section (5) of the proposed new section 29A requires that where the financial year or years of a subsidiary referred to in sub-section (2) do not coincide with the financial year of the banking company or banking co-operative society a statement containing information on the matters specified in that sub-section shall also be attached to the balance-sheet of the banking company or banking co-operative society.

Sub-section (6) of the proposed new section 29A requires that if, for any reason, the Board of directors of the banking company or banking co-operative society is unable to obtain information on any of the matters required to be specified by sub-section (4), a report in writing to that effect shall be attached to the balance-sheet of the banking company or banking co-operative society.

Sub-section (7) of the proposed new section 29A requires that the documents referred to in clauses (e), (f) and (g) of sub-section (1) shall be signed by the persons by whom the balance-sheet of the banking company or banking co-operative society is required to be signed.

Sub-section (8) of the proposed new section 29A requires that the Reserve Bank may, by notification, on the application or with the consent of the Board of directors of the banking company or banking co-operative society, direct that in relation to any subsidiary, the provisions of this section shall not apply, or shall apply to such extent as may be specified in the direction.

Clause 39.—This clause seeks to amend section 30 of the Banking Regulation Act, 1949 relating to audit of a banking company.

The existing provision contained in the said section provides for audit of every banking company by an auditor qualified under the Companies Act, 1956. The Reserve Bank of India is also empowered to issue directions for special audit of the banking company.

It is proposed to amend the section to provide that the Reserve Bank of India may direct the auditor in the matter relating to balance-sheet, profit and loss account, disclosure of liabilities in the books of account or any other matter relating thereto.

It is further proposed that it shall be the duty of the auditor to enquire and state in the report whether or not the banking company has complied with the provisions of the Act or any direction or notification or order issued thereunder. The auditor shall also be required to enquire and state whether the information or statement called for by the Reserve Bank of India has been furnished to it or not. If the bank has not complied with this requirement, the auditor shall make a report to the Reserve Bank of India.

In respect of extending the provisions of the aforesaid section 30 to banking co-operative society, it is proposed that a banking co-operative society having demand and time liabilities of rupees one hundred crore and above shall be audited by an auditor qualified under any law for the time being in force to be an auditor and other provisions of this section will also apply to such banking co-operative society.

Clause 40.—This clause seeks to amend section 31 of the Banking Regulation Act, 1949 relating to submission of returns. The provisions contained in the second proviso to that section require that a Regional Rural Bank shall furnish returns also to the National Bank for Agriculture and Rural Development established under section 3 of the National Bank for Agriculture and Rural Development Act, 1981.

It is proposed to amend the said section to provide that a banking co-operative society (or not being a primary co-operative bank) shall furnish such returns also to the National Bank for Agriculture and Rural Development.

Clause 41.—This clause seeks to omit section 34 of the Banking Regulation Act, 1949 relating to accounting provisions. This section, *inter alia*, provides for preparation of accounts by a banking company and submission thereof in respect of any accounting year which has expired prior to commencement of that Act. The said section has become redundant. It is, therefore, proposed to omit the aforesaid section.

Clause 42.—This clause seeks to amend section 34A of the Banking Regulation Act, 1949 regarding production of documents of confidential nature. The provision contained in this section provides that no banking company shall be compelled in any proceedings before the Tribunal under the Industrial Disputes Act, 1947, or any other law for the time being in force, to produce or give inspection of any books of account or other documents which banking company claims to be of confidential nature.

It is proposed to apply this section also to banking co-operative societies.

Clause 43.—This clause seeks to amend section 35 of the Banking Regulation Act, 1949 relating to inspection. The existing provisions contained in the said section, *inter alia*, empower the Reserve Bank of India to cause an inspection to be made by its officers of any banking company or of its books of account or to cause a scrutiny to be made of its affairs and its books of account. Sub-section (2) of the aforesaid section provides that, it is the duty, during such inspection of its books of account or scrutiny of its affairs and its books of account, of every director or other officer or employee of the banking company to produce to such officers of such books of account and other documents in his custody or power and also to furnish him with such other information relating to affairs of the banking company.

It is proposed to confer the powers of inspection and scrutiny in the aforesaid section 35 in respect of subsidiaries formed by a banking company under section 19 of the said Act.

It is further proposed that the provisions contained in the aforesaid section 35 may be made applicable to the banking co-operative societies.

It is also proposed to substitute sub-section (6) of the aforesaid section to enable the State co-operative bank to carry out inspection of primary co-operative bank as and when Reserve Bank of India considers it necessary.

Clause 44.—This clause seeks to amend section 35A of the Banking Regulation Act, 1949 relating to power of Reserve Bank of India to give directions. The existing provisions contained in the section, *inter alia*, empower the Reserve Bank of India to issue directions to banking companies either generally or to any banking company in particular, in the public interest or in the interest of banking policy or to prevent the affairs of the banking company being conducted in a manner detrimental to the interest

of depositors or in the interest of banking company or to secure proper management of the banking company.

It is proposed to amend the aforesaid section 35A to confer the powers upon the Reserve Bank of India to give directions under that section to the banking co-operative society also.

Clause 45.—This clause seeks to amend section 35B of the Banking Regulation Act, 1949 relating to amendments of provision in the memorandum of articles of association regarding appointment of managing director, etc., which are subject to previous approval of the Reserve Bank of India. The existing provisions contained in the section provide that in the case of a banking company no amendment of any provision relating to maximum permissible directors, appointment or re-appointment or termination or remuneration of a chairman, managing director, or director shall be made without the approval of the Reserve Bank of India.

It is proposed to confer upon the Reserve Bank of India similar powers in relation to banking co-operative societies also.

Clause 46.—This clause seeks to amend section 36 of the Banking Regulation Act, 1949 which relates to further powers and functions of the Reserve Bank of India. The existing provisions contained in the said section, *inter alia*, provide that the Reserve Bank of India may caution or prohibit the banking companies generally or any banking company in particular, against entering into any transaction or class of transactions or depute one or more of its officers to watch the proceedings of the meetings of Board of directors of the banking company, etc.

It is proposed to extend the powers conferred upon the Reserve Bank of India under aforesaid section 36 in relation to banking co-operative societies also.

Clause 47.—This clause seeks to amend section 36A of the Banking Regulation Act, 1949 which provides that certain provisions of that Act shall not apply to certain banking companies. The existing provisions contained in the section provides that provisions of section 11, sections 12(1), 17, 18, 24 and 25 shall not apply to a banking company which has been refused licence by the Reserve Bank of India.

It is proposed to apply the aforesaid section 36A also to banking co-operative societies.

Clause 48.—This clause seeks to amend section 36AA of the Banking Regulation Act, 1949 which confers powers upon the Reserve Bank of India to remove managerial and other persons from office. The existing provisions contained in the said section provide that where the Reserve Bank of India is satisfied that in the public interest or for preventing the affairs of the banking company being conducted in a manner detrimental to the interest of the depositors or for securing proper management of any banking company, it may remove from office any Chairman, Director, Chief Executive Officer or officer or employee of the banking company.

It is proposed to confer upon the Reserve Bank of India similar powers in relation to the banking co-operative societies also.

The existing provisions contained in the aforesaid section further provide that if any person in respect of whom an order is made by the Reserve Bank of India under sub-section (1) or under the proviso to sub-section (2) contravenes the provisions of the aforesaid section 36AA, he shall be punishable with fine which may extend to two hundred and fifty rupees for each day during which contravention continues.

It is proposed to enhance the penalty with imprisonment for a term not exceeding two years or with fine which may extend to five crore rupees, or with both.

Clause 49.—This clause seeks to amend section 36AB of the Banking Regulation Act, 1949 which empowers the Reserve Bank of India to appoint additional Directors. The existing provisions contained in the said section provide that in the interest of the banking policy or in the public interest or in the interest of banking company or its depositors, the Reserve Bank of India may appoint additional Directors on the Board of the banking company.

It is proposed to confer upon the Reserve Bank of India similar powers in relation to the banking co-operative societies also.

Clause 50.—This clause seeks to insert a new Part IIAB in the Banking Regulation Act, 1949 relating to supersession of Board of directors of banking company and banking co-operative societies.

It is proposed to insert a new section 36ACA under the proposed new Part IIAB relating to supersession of Board of directors of banking company and banking co-operative societies in certain cases.

Sub-section (1) of the proposed new section 36ACA provides that where the Reserve Bank of India is satisfied that it is in the public interest or for preventing the affairs of the banking company or banking co-operative society being managed in a manner detrimental to the interest of the depositors or the banking company or banking co-operative society or for securing the proper management of any banking company or banking co-operative society, it is necessary so to do, the Reserve Bank of India may, for reasons to be recorded in writing, by order, published in the Official Gazette supersede the board of directors of such banking company or banking co-operative society, for a period of time not exceeding six months, as may be specified in the order, which may be extended from time to time, so, however that total period shall not exceed twelve months. However, before making any such order, the Reserve Bank of India shall give a reasonable opportunity to the Board of directors of such banking company or banking co-operative society to make representation against the proposed supersession and shall consider the representation, if any, of the Board of directors.

Sub-section (2) of the proposed new section 36ACA provides that the Reserve Bank of India may, on supersession of the Board of directors of the banking company or banking co-operative society under sub-section (1), appoint an Administrator.

Sub-section (3) of the proposed new section 36ACA provides that the Reserve Bank of India may issue such directions to the Administrator as it may deem appropriate and the Administrator shall be bound to follow such directions.

Sub-section (4) of the proposed new section 36ACA provides that upon making of the order under sub-section (1) superseding the Board of directors of a bank, the Chairman and other directors shall, as from the date of supersession, vacate their offices as such.

All the powers, functions and duties which may, by or under the provisions of the Companies Act, 1956 or Banking Regulation Act, 1949, or any other law for the time being in force be exercised or discharged, by or on behalf of the Board of directors of such banking company or banking co-operative society, or by a resolution passed in general meeting of that banking company or banking co-operative society, be exercised and discharged by the Administrator appointed by the Reserve Bank of India under sub-section, until the Board of directors of such banking company or banking co-operative society is reconstituted under sub-section (6). However the power exercised by the Administrator shall be valid notwithstanding that such powers are exercisable by a resolution passed in the general meeting of the banking company or banking co-operative society.

Sub-section (5) of the proposed new section 36ACA provides that the Reserve Bank of India may constitute a committee of three or more persons who have experience in law, finance, bank, administration or accountancy to assist the Administrator in discharge of his duties and such committee shall meet at such times and places and observe such rules of procedure as may be specified by the Reserve Bank of India.

Sub-section (6) of the proposed new section 36ACA provides that the salary and allowances to the Administrator and the members of the committee of the banking company or banking co-operative society shall be such as may be specified by the Reserve Bank of India and be payable by the concerned banking company or banking co-operative society.

Sub-section (7) of the proposed new section 36ACA provides that the Administrator of such banking company or banking co-operative society, shall, on and before expiration of two months before expiry of the period of supersession specified in the order issued under sub-section (1), call the general meeting of the banking company or banking co-operative society to elect new directors and any person who had vacated his office under clause (a) of sub-section (3), shall not be deemed to be disqualified for re-appointment.

Sub-section (8) of the proposed new section 36ACA provides that no person shall, notwithstanding anything contained in any law or in any contract, the memorandum or articles of association or bye-laws on the removal of a person from office under this section, be entitled to claim any compensation for the loss or termination of office.

Clause 51.—This clause seeks to substitute Part IIB in the Banking Regulation Act, 1949 relating to prohibition of certain activities in relation to banking companies or banking co-operative societies by a new Part.

It is proposed to substitute a new section for section 36AD under the Part IIB relating to prohibition of certain activities in relation to banking companies or banking co-operative societies. The existing provisions contained in section 36AD provides that no person shall obstruct any person from entering or leaving the bank's premises for the purpose of business. Whoever contravenes such provisions without any reasonable excuse is punishable with imprisonment for a term which may extend to six months or with fine which may extend to one thousand rupees.

It is proposed to extend the punishment for certain activities specified in section 36AD to banking co-operative societies also.

Clause 52.—This clause seeks to amend section 44A of the Banking Regulation Act, 1949 relating to the procedure for amalgamation of banking companies. The existing provisions contained in the said section, *inter alia*, provides for the procedure for amalgamation of a banking company with another banking company, subject to the approval of the scheme of amalgamation by the Reserve Bank of India.

It is proposed to insert a new sub-section (8) in the aforesaid section 44A so as to provide for amalgamation of a banking company with a public sector bank.

Clause 53.—This clause seeks to insert new sections 44AA, 44AB and 44AC. The proposed new section 44AA contains provisions for amalgamation of a banking company with State Bank of India or subsidiary bank or a corresponding new bank. It further provides that the State Bank of India or subsidiary bank or corresponding new bank shall, comply with the provisions of the State Bank of India Act, 1955 or State Bank of India (Subsidiary Banks) Act, 1959 or the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 or the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1980 as the case may be, for amalgamation of any banking company and the provisions of those Acts shall be in addition to, and not in derogation of the provisions contained in section 44A of this Act.

The proposed new section 44AB contains provision for amalgamation of one banking co-operative society with another banking co-operative society. It further provides that the provisions contained in sub-sections (1) to (7) of section 44A [except sub-sections (6A) and (6B)] of the Banking Regulation Act, 1949 relating to the amalgamation of a banking company with another banking company in this section shall, as far as may be, apply to the amalgamation of a banking co-operative society with another banking co-operative society.

The proposed new section 44AC contains provision for amalgamation of non-banking financial company with banking company. It further provides that the provisions contained in sub-sections (1) to (7) of section 44A relating to the amalgamation of a banking company with another banking company in this section shall, as far as may be, apply to the amalgamation of a non-banking financial company with a banking company under this section.

Clause 54.—This clause seeks to substitute a new section 45 of the Banking Regulation Act, 1949 which confers power upon the Reserve Bank of India to apply to the Central Government for suspension of business by a banking company and to prepare scheme of reconstruction or amalgamation. Under the existing provisions contained in the said section, the Reserve Bank of India may apply to the Central Government for an order of moratorium in respect of a banking company. The total period of moratorium shall not exceed six months. During the period of moratorium, the Reserve Bank of India may prepare a scheme for reconstruction of a banking company or amalgamation of a banking company with any other banking company or a public sector bank.

It is proposed to increase the existing period of moratorium from six months to one year. It is also proposed to apply all the provisions contained in section 45 of the aforesaid section to banking co-operative societies also.

Clause 55.—This clause seeks to amend the heading below the Part III-B of the Banking Regulation Act, 1949.

It is proposed to substitute "BANKING COMPANIES OR BANKING CO-OPERATIVE SOCIETIES" for "BANKING COMPANIES". The proposed amendment is of consequential in nature.

Clause 56.—This clause seeks to amend sections 45Y, 45Z, 45ZA and 45ZB of the Banking Regulation Act, 1949. Section 45Y confers power upon the Central Government to make rules for preservation of records of a banking company. Section 45Z contains provisions for return by a banking company of paid instruments to customers.

Section 45 ZA contains provision for nomination for payment of depositor's money held by a banking company and section 45ZB contains provision in respect of notice of claims of other persons regarding deposits not receivables.

It is proposed to make them applicable the provisions contained in the aforesaid sections to the banking co-operative societies also.

Clause 57.—This clause seeks to amend section 45ZC of the Banking Regulation Act, 1949 relating to nomination for return of articles kept in safe custody with banking company. The existing provision provides for the return of articles in safe custody by a banking company to a nominee of the depositor and procedure relating thereto.

It is proposed to make the provisions contained in the said section applicable to banking co-operative societies also.

Clause 58.—This clause seeks to amend sections 45ZD, 45ZE and 45ZF of the Banking Regulation Act, 1949. Section 45ZD contains provision relating to notice of claims of other persons regarding articles not receivables. Section 45ZE contains provision for release of contents of safety lockers hired from a banking company and

section 45ZF contains provision relating to notice of claims for other persons regarding safety lockers not receivables.

It is proposed to apply the aforesaid sections to banking co-operative societies also.

Clause 59.—This clause seeks to amend section 46 of the Banking Regulation Act, 1949 relating to penalties.

The existing provisions contained in sub-section (1) of the said section provide that whoever in any return, balance-sheet or other document (or on any other information required or furnished) by or under or for the purpose of any provision of this Act, wilfully makes a statement which is false in any material particular, knowing it to be false, or wilfully omits to make a material statement, shall be punishable with imprisonment for a term which may extend to three years and shall also be liable to fine.

It is proposed to amend the said sub-section (1) to provide for an imprisonment not less than one year but which may extend to seven years.

It is proposed to insert new sub-section (1A) so as to provide that every director who has voted in favour of the resolution of the Board of directors or committee thereof of the banking company or banking co-operative society, as the case may be, for sanctioning the loan and advance in contravention of sub-section (1) of section 20 of the Banking Regulation Act, 1949, shall be punishable with imprisonment for a term which may extend to two years, or with fine, or with both.

The existing provisions contained in sub-section (2) provides that if any person fails to produce any books of account and other document or any statement or information required during inspection of a banking company under section 35 is punishable with fine which may extend to two thousand rupees in respect of each offence and if he persists in such refusal, he is punishable with further fine which may extend to one hundred rupees for every day during which offence continues.

It is proposed to amend said sub-section (2) so as to enhance the fine from two thousand rupees to twenty thousand rupees and also to enhance fine from one hundred rupees to fifty thousand rupees for every day during which offence continues.

It is also proposed to extend the provisions of the said sub-section (2) to banking co-operative societies also.

Under the existing provisions contained in sub-section (3), receiving of deposits by a banking company in contravention of an order under clause (a) of sub-section (4) of section 35 of the said Act is punishable with a fine which may extend to twice the amount of deposits received.

It is proposed to extend the provisions of the said sub-section (3) to the banking co-operative societies also.

Under the existing provisions contained in sub-section (4), if a default is made in compliance with any other provisions of the said Act, or of any order, rule, direction made or issued thereunder or carrying out the terms of, or the obligation under, a scheme, sanctioned under sub-section (7) of section 45 by any person. Such person is punishable with fine which may extend to fifty thousand rupees or twice the amount involved in such contravention or default where such amount is quantifiable, whichever is more and where a contravention default is a continuing one, he is punishable with further fine which may extend to two thousand five hundred rupees for every day during which the contravention or default continues.

It is proposed to enhance the said fine from fifty thousand rupees to one crore rupees and also to enhance the amount of further fine from two thousand five hundred rupees to one lakh rupees.

It is also proposed to apply the provision contained in sub-sections (5) and (6) to banking co-operative societies.

Clause 60.—This clause seeks to insert a new section 46B in the Banking Regulation Act, 1949 relating to enhancement of punishment for certain offences committed after previous conviction. The proposed new section provides that if any person, who has been convicted of the commission of offence punishable under sub-section (1) of section 46 of that Act, is subsequently convicted of offence punishable under that section, he shall be punished for the second and every subsequent offence with rigorous imprisonment for a term which shall not be less than one year but which may extend to ten years and shall also be liable to fine.

Clause 61.—This clause seeks to amend section 47A of the Banking Regulation Act, 1949 relating to power of the Reserve Bank of India to impose penalty. The present section provides that the Reserve Bank of India may impose on a banking company which has contravened any of the provision of the Act or direction, order, notification, etc., issued under the Act, a penalty not exceeding five lakh rupees or twice the amount involved in such contravention whichever is more and where such contravention continues, a further fine not exceeding rupees twenty five thousand for every day of contravention, may be imposed during the time contravention continues.

It is proposed to enhance the existing penalty from five lakh rupees to five crore rupees or five times of the amount involved in such contravention, whichever is higher.

It is also proposed to apply the provisions contained in the said section to banking co-operative societies also.

Clause 62.— This clause seeks to amend section 49A of the Banking Regulation Act, 1949 relating to restriction on acceptance of deposits withdrawable by cheque. The existing provisions contained in said section 49A provides that no person, other than the banking company, Reserve Bank of India, State Bank of India or any of the banking institution or firm or other person notified by the Central Government, shall accept from the public deposits of the money withdrawable by cheque.

It is proposed to apply the provisions contained in the said section 49A to banking co-operative societies also.

Clause 63.—This clause seeks to insert a new section 49B in the Banking Regulation Act, 1949 relating to change of name by a banking co-operative society. The proposed new section provides that no banking co-operative society shall, without prejudice to the provisions contained in any other law for the time being in force, shall change its name unless the Reserve Bank of India certifies in writing that it has no objection to such change.

Clause 64.— This clause seeks to insert new section 49D in the Banking Regulation Act, 1949 relating to alteration of bye-laws of banking co-operative society. The proposed new section provides that no application for the confirmation of the alterations of the bye-laws of a banking co-operative society shall be maintainable before any authority unless the Reserve Bank of India certifies that there is no objection to such alterations.

Clause 65.— This clause seeks to substitute section 50 of the Banking Regulation Act, 1949 which provides for certain claims for compensation barred. The existing provisions contained in the said section 50 provides that no person shall have any right to any compensation for any loss incurred by reason of operation of certain provisions of the Act.

The new section proposes to make the provisions contained in aforesaid section 50 applicable in respect of a banking co-operative society also whose chairman, director, etc., may suffer loss of office due to operation of the relevant provisions of the said Act relating to banking co-operative societies.

Clause 66.—This clause seeks to amend section 51 of the Banking Regulation Act, 1949 relating to application of certain provisions to the State Bank of India, subsidiary banks, nationalised banks and regional rural banks.

The proposed amendment is of consequential in nature.

Clause 67.— This clause seeks to insert new sections 51A and 51B of the Banking Regulation Act, 1949.

The proposed new section 51A provides for application of certain provisions to certain financial institutions. It provides that (a) the provisions of sections 20, 27, 28, 30, 35, 35A, 35B and 36AA of the Banking Regulation Act, 1949 shall also apply, so far as may be, to and in relation to the Industrial Finance Corporation of India Limited, being a company registered under the Companies Act, 1956, the Industrial Investment Bank of India Limited, being a company registered under the Companies Act, 1956, the Tourism Finance Corporation of India Limited, being a company registered under the Companies Act, 1956, the Infrastructure Development Finance Company Limited, being a company registered under the Companies Act, 1956, as they apply to and in relation to the banking companies; (b) the provisions of sections 20, 27, 28, sub-sections (1B), (1C), (1D), (4) and (5) of section 30, sections 35 and 35A. shall also apply to the Small Industries Bank; the National Bank; the National Housing Bank; the Exim Bank; as they apply to and in relation to the banking companies. However, the provisions of sections 18 and 24 of the Banking Regulation Act, 1949 shall also apply to the companies referred to in clause (a) or financial institutions referred to in clause (b) if such company or financial institutions accept demand deposit from the public.

The proposed new section 51A confers power to modify the Act in relation to certain companies and financial institutions.

The proposed new section 51A provides that the Central Government may, in consultation with the Reserve Bank of India may, by notification in the Official Gazette, direct that any of the provision of this Act (other than section 52) specified in the notifications, (a) shall not apply to any company referred to in sub-clause (i) or clause (ii) or sub-clause (iii) or sub-clause (iv) of clause (a) or any Bank referred to in sub-clause (i) or sub-clause (ii) or sub-clause (iii) or sub-clause (iv) of clause (b) of section 51A(b) shall apply to any company referred to in sub-clause (i) or clause (ii) or sub-clause (iii) or sub-clause (iv) of clause (a) or any Bank referred to in sub-clause (i) or sub-clause (ii) or sub-clause (iii) or sub-clause (iv) of clause (b) of section 51A, (b) only with such exceptions, modifications and adaptations, as may be specified in the notification. However a copy of every notification proposed to be issued under sub-section (1), shall be laid in draft before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in disapproving the issue of the notification or both Houses agree in making any modification in the notification, the notification shall not be issued or as the case may be shall be issued only in such modified form as may be agreed upon by both the Houses.

Clause 68.—This clause seeks to amend section 53 of the Banking Regulation Act, 1949 which empowers the Central Government to exempt all banking companies or a banking company from the applicability of the provisions of this Act.

It is proposed to amend this section so as to make the provisions contained therein applicable in respect of banking co-operative societies also.

Clause 69.— This clause seeks to amend section 56 of the Banking Regulation Act, 1949 which provides for application of certain sections of that Act with certain modifications to co-operative banks.

The provisions of the Bill makes applicable the various provisions of the Banking Regulation Act, 1949 to the banking co-operative societies. It is proposed that the provisions of section 56 shall not apply after the proposed amendments contained therein come into force. The proposed amendment is of consequential in nature.

Clause 70.—This clause seeks to amend the heading above section 6 of the principal Act and the Third Schedule to the Banking Regulation Act, 1949. It is proposed to change the heading from business of banking companies to business of banking companies and banking co-operative societies.

It is further proposed to make the Form of Balance Sheet relating to banking companies applicable to banking co-operative societies also.

The proposed amendments are of consequential in nature.

Clause 71.— This clause seeks to amend certain enactments specified in the Schedule to the Bill.

It is proposed to amend the State Financial Corporations Act, 1951, the State Bank of India Act, 1955, the State Bank of India (Subsidiary Banks) Act, 1959, the Warehousing Corporations Act, 1962, the Regional Rural Banks Act, 1976, the Industrial Financial Corporation (Transfer of Undertakings and Repeal) Act, 1993 and Industrial Reconstruction Bank (Transfer of Undertaking and Repeal) Act, 1997 and the Unit Trust of India (Transfer of Undertakings and Repeal) Act, 2002 to provide that securities issued by financial corporations and Banks established or constituted under those Acts are not treated as approved securities for the purpose of Banking Regulation Act, 1949.

It is further proposed to amend the Companies Act, 1956 to provide that in case of a banking company, the provisions contained in clause (b) of sub-section (2) of section 87 of the Companies Act, 1956 shall not entitle the holder of any preference share to exercise his voting rights in the same proportion as the capital paid-up in respect of preference shares bears to the total paid-up equity capital of such company.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 19 of the Bill seeks to insert, *inter alia*, a new section 12C in the Banking Regulation Act, 1949 relating to restriction on transfer of shares. Sub-section (1) of section 12C of the said clause proposes to empower the Central Government to prescribe by rules the other particulars of the shares to be transferred by the transferee.

2. Clause 35 of the Bill seeks to insert, *inter alia*, a new section 26A in the Banking Regulation Act, 1949 for the establishment of a Depositor Protection Fund. Sub-section (4) of the said new section proposes to empower the Central Government to prescribe by rules the other purposes for which the Fund may be utilised. Sub-section (5) of the aforesaid new section also proposes to empower the Central Government to prescribe by rules the forms in which separate accounts and other relevant records in relation to the Funds shall be maintained.

3. Clause 54 of the Bill seeks to substitute a new section for section 45 of the Banking Regulation Act, 1949 which deals with powers of Reserve Bank to apply to the Central Government for suspension of business by a banking company or banking co-operative society and to prepare a scheme of reconstruction or amalgamation. Sub-section (11) of the new proposed section 45 empowers the Central Government to remove any difficulty in giving effect to the provisions of the scheme prepared under the said section. Sub-section (12) of the new proposed section 45 further requires the Central Government to lay the copy of the scheme or of the order before both Houses of Parliament, as soon as may be, after the scheme has been sanctioned by the Central Government, or, as the case may be, the order has been made.

4. Clause 57 of the Bill seeks to substitute a new section for section 45ZC of the Banking Regulation Act, 1949 which deals with the nomination of return of articles in safe custody with the banking company. Sub-section (1) of the said section 45ZC empowers the Central Government to prescribe by rules the manner by which a person may nominate another person to whom, in the event of the death of such person, the articles in safe custody may be returned by a banking co-operative society. Sub-section (4) of the said section 45ZC empowers the Central Government to prescribe the manner by which the nomination may be varied or cancelled by a banking co-operative society.

5. Clause 58 of the Bill, *inter alia*, seeks to amend section 45ZE of the Banking Regulation Act, 1949 which deals with release of contents of safety lockers by a banking co-operative society. Sub-section (3) of section 45ZE empowers the Central Government to prescribe by rules the manner in which a person may nominate another person under sub-section (1) or under sub-section (2) of section 45ZE for the said purpose.

6. Clause 68 of the Bill seeks to amend section 53 of the Banking Regulation Act, 1949. The existing provisions contained in the said section empowers the Central Government, on the recommendations of the Reserve Bank to declare by notification in the Official Gazette, that any or all of the provisions of the Banking Regulation Act, 1949 shall not apply to any banking company or institution or to any class of banking company either generally or for such period as may be specified. It is now proposed to extend the scope of the provisions of this section to a banking co-operative society also. It is further proposed to empower the Central Government to lay the proposed notification to be issued under this section in draft before each House of Parliament.

7. The matters in respect of rules which may be made are generally matters of procedure and administrative detail and it is not practicable to provide for them in the Bill itself. The delegation of legislative power, involved, is of a normal character.

G. C. MALHOTRA,
Secretary-General.